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HOUSE OF REPRESENTATIVES

REPT. 96-
1382, Part II

ATOMIC ENERGY ACT AMENDMENTS OF 1980

SEPTEMBER 24, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

ADDITIONAL

and

SEPARATE VIEWS

COMPLETED

ORIGINAL

[To accompany H.R. 6390 which on January 31, 1980, was referred jointly to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce.]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6390) to amend the Atomic Energy Act of 1954, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Atomic Energy Act Amendments of 1980".

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TITLE I—AMENDMENTS RELATING PRIMARILY TO RADIOACTIVE WASTE

SUBTITLE A—NUCLEAR HIGH-LEVEL WASTE REPOSITORIES

FINDINGS AND PURPOSES

SEC. 101. (a) FINDINGS.—The Congress finds that—

(1) Federal efforts made during the past 30 years to devise a permanent solution to the problems of nuclear waste disposal have not been adequate.

(2) The accumulation of nuclear waste from military activities, commercial reactors, and activities related to medical research, diagnosis, and treatment, as well as nuclear waste from other sources, has created a national problem which can be resolved only with the cooperation of the Federal Government and the States.

(3) The construction and operation of repositories for the disposal of high-level waste and spent fuel is a Federal responsibility and is in the national interest.

(4) The disposal of nuclear waste is a potentially hazardous operation which should be subject to appropriate oversight by affected State and local governments.

(5) Public participation in planning and development of repositories for the disposal of nuclear waste is essential in order to promote confidence among the public with regard to the safety of disposal of nuclear waste.

(6) The implementation of a waste repository development program in accordance with this Act would provide reasonable assurance that methods of safe permanent disposal of high-level waste can be available when such methods are needed.

(7) By order issued December 23, 1977, the Nuclear Regulatory Commission terminated the proceedings related to the Generic Environmental Statement on Mixed Oxide Fuel (GESMO) in response to concerns that the continuation of such proceedings would negatively affect the nonproliferation initiatives of the

Federal Government. As a consequence, the option to reprocess spent nuclear fuel is presently foreclosed to the nuclear industry. In recognition of the need to move forward with a waste management plan, it is necessary at this time to do preliminary planning on the basis of geologic disposal of spent fuel. The Congress recognizes, however, that this policy with regard to reprocessing may change, and the Congress hereby encourages the Secretary to take this possibility into account in subsequent planning with regard to the disposal of nuclear wastes.

(b) PURPOSE.—It is the purpose of this Act to—

(1) set forth the responsibilities of the Secretary of Energy, the Nuclear Regulatory Commission, the Congress, and the President with respect to the development and construction of licensed repositories for the permanent disposal of nuclear high-level waste and spent fuel, including the dates by which certain activities must be carried out; and

(2) provide for State participation in decisionmaking on waste repository site development and for Federal assistance for States impacted by repository construction or operation.

DEFINITIONS

SEC. 102. For purposes of this Act—

(1) The term "disposal" means the emplacement of radioactive waste with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such materials.

(2) The term "high-level waste" means (A) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, and (B) solids into which such liquid wastes have been converted.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3 of the Alaska Native Claims Settlement Act (85 Stat. 688).

(4) The term "Indian reservation" means—

(A) the Indian reservations and dependent Indian communities referred to in clauses (a) and (b) of section 1151 of title 18, United States Code; and

(B) lands selected by Alaska Native villages or regional corporations under the provisions of the Alaska Native Claims Settlement Act.

(5) The term "Secretary" means the Secretary of Energy.

(6) The term "site characterization" means the program of exploration and research, both in the laboratory and in the field, undertaken to establish the geologic conditions and the ranges of those parameters of a particular site relevant to the procedures required under this Act. Site characterization includes borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to determine the suitability of the site for a geologic repository, but does not include preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken.

(7) The term "spent fuel" means that fuel that has been withdrawn from a nuclear reactor following irradiation and the constituent elements of which have not been separated by reprocessing.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(9) The term "State Review Board" means any Nuclear Waste Repository Impact Review Board that meets the requirements under section 105(a).

RESPONSIBILITIES OF THE SECRETARY OF ENERGY

SEC. 103. (a) SELECTION OF REPOSITORY SITES.—(1) The Secretary shall carry out a program to construct and operate licensed repositories for the permanent disposal of high-level waste and spent fuel. Under the program, the Secretary shall identify and recommend to the Congress at least four potential repository sites which the Secretary considers suitable for development as licensed repositories. Such sites shall be located, to the maximum extent practicable, in four different geologic

media. Recommendations for the four sites shall be submitted to the Congress by December 31, 1985.

(2) Sites which shall be examined under this subsection shall include those consisting of the following geologic media: basalt, tuff, granite, bedded salt, domed salt, and such other media as the Secretary may consider suitable. No site shall be recommended to the Congress under paragraph (1) unless the Secretary considers such site potentially suitable for future use as a licensed repository for the disposal of high-level waste and spent fuel.

(3) After identification of the four initial potential repository sites under paragraph (1), the Secretary shall continue to conduct screening at other locations to determine the availability of additional potential repository sites in the geologic media described in paragraph (2).

(4) The recommendation of a repository site under this subsection shall not be considered to be a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969.

(b) SITE SELECTION CRITERIA.—Not later than February 15, 1981, the Secretary shall, in consultation with the Council on Environmental Quality, the Environmental Protection Agency, the Nuclear Regulatory Commission, and the United States Geological Survey, issue guidelines for site qualification. Such guidelines shall include criteria for the elimination of sites from consideration for repository development, including criteria with respect to such factors as association of the sites with valuable natural resources, proximity to populations, hydrogeophysics, seismic activity, defense nuclear activities, and such other factors as the Secretary considers appropriate. The Secretary shall use these guidelines in screening sites for selection under subsection (a) for characterization for possible development into licensed repositories. The development of these guidelines shall be considered a preliminary decisionmaking activity and shall not be considered to be a major Federal action under 102(2)(C) of the National Environmental Policy Act of 1969.

(c) REPOSITORY SITE CHARACTERIZATION.—(1) Before proceeding to sink shafts at any repository site selected under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission for such site—

(A) an environmental assessment of nonradiological impacts of planned site characterization activities and a discussion of alternative procedures and any mitigating measures relating to such impacts; and

(B) a characterization plan which includes at least the following items—

(i) a description of the site to be characterized;

(ii) a description of the planned site characterization program, including the extent of planned excavations, plans for any on-site testing of radioactive or non-radioactive material, investigation activities which may affect the ability of the site to isolate wastes and spent fuel, and provisions to control any adverse, safety-related impacts from site characterization including appropriate quality assurance programs;

(iii) plans for decommissioning of the site if it is determined unsuitable for application for licensing as a permanent repository;

(iv) criteria and associated data used to arrive at candidate areas; and

(v) any other information required by the Nuclear Regulatory Commission prior to the sinking of shafts at potential repository sites; and

(C) proposals describing the possible form or packaging for the waste material and spent fuel which would be emplaced in the repository.

(2) In carrying out activities at each proposed repository site, the Secretary shall consult on a continual basis with the Nuclear Regulatory Commission. Opportunities shall be provided for participation by the public and the affected States with respect to such consultations.

(3) At proposed repository sites for which environmental assessments and site characterization plans have been submitted under this subsection, the Secretary shall conduct such tests as may be necessary to provide data sufficient to validate a license application and to comply with the National Environmental Policy Act of 1969, except that—

(A) the Secretary shall not use radioactive wastes for site characterization unless the Nuclear Regulatory Commission and the Secretary concur that such use is necessary to provide data for geologic repository licensing activities;

(B) if radioactive materials are placed in the site, the Secretary shall place the smallest quantity necessary to determine the suitability of the site for a repository;

(C) in no case shall tests at any site involve the use of an amount of high-level waste or spent fuel which contains more than the curie equivalent of 10 metric tons of spent fuel; and

(D) any radioactive wastes used or placed on the site shall be fully retrievable.

(4) The Secretary shall not continue characterization activities at any site if the Secretary determines that site to be unsuitable for eventual development as a licensed repository, unless the Secretary determines that continued activity would provide information which could requalify the site for possible licensing. If the Secretary makes any such determinations, the Secretary shall submit a report containing the reasons therefor to the Congress. If characterization activities are terminated at a site for any reason, the Secretary shall remove any nuclear waste or other radioactive materials at or in the site as promptly as practicable.

(d) RECOMMENDATION OF PERMANENT REPOSITORY SITES.—(1)(A) Not later than March 30, 1988, the Secretary shall submit to the President for his review under section 107(b) a recommendation of the site which the Secretary considers qualified for application for license as a permanent repository for high-level waste and spent fuel and which conforms to the criteria developed pursuant to subsection (b). After such date, the Secretary may submit to the President recommendations for other sites which the Secretary also considers suitable for such purpose. Together with any recommendation of a site under this paragraph, the Secretary shall submit to the President a report containing the following:

(i) A description of the proposed repository, including engineering plans for the facility.

(ii) A description of the waste form or packaging proposed for use at the repository.

(iii) A discussion of data, obtained in site characterization activities, relating to the safety of the repository site.

(iv) A final environmental impact statement for the site and the design of the repository as required under the National Environmental Policy Act of 1969 together with comments made concerning the environmental impact statement by the Department of the Interior, the Council on Environmental Quality, the Environmental Protection Agency, and the Nuclear Regulatory Commission.

(v) Preliminary comments of the Nuclear Regulatory Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for the site seem to be sufficient for inclusion in any application to be submitted by the Department of Energy for licensing of the site as a permanent repository for high-level waste and spent fuel.

(vi) The views of any State Review Board, and any governing body of an Indian tribe, which is affected by such site, as determined by the Secretary, together with the Secretary's response to such views.

(vii) Such other information as the Secretary considers appropriate to provide a complete statement of the basis for the recommendation of the site for licensing as a repository for the disposal of high-level waste and spent fuel.

(B) If the approval of a site recommendation for the initial repository proposed as required under subparagraph (A) does not take effect as a result of the operation of section 107(b) or 107(c), the Secretary shall resubmit to the President under section 107(b), within one year after the disapproval of the recommendation, a recommendation of another site for an initial repository, together with a report as described under subparagraph (A).

(2) The Secretary shall submit an application for an authorization under the Atomic Energy Act of 1954 for the construction of a repository for high-level waste and spent fuel at any repository site recommended as qualified for application for license under paragraph (1) as soon as possible after the date on which the recommendation of the designation of such site is effective in accordance with section 107.

RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION AND THE ENVIRONMENTAL PROTECTION AGENCY

SEC. 104. (a) PROMULGATION OF STANDARDS.—(1) Not later than June 30, 1981, the Nuclear Regulatory Commission shall, by rule, promulgate standards and requirements for the licensing and regulation of the disposal of high-level waste and spent fuel. Such standards and requirements shall be consistent with the applicable general standards promulgated by the Administrator of the Environmental Protection Agency under paragraph (2).

(2) As soon as practicable, but not later than January 31, 1981, the Administrator of the Environmental Protection Agency shall, by rule, promulgate standards and requirements of general application pertaining to the licensing and regulation of the disposal of high-level waste and spent fuel. The Administrator shall consult with the Nuclear Regulatory Commission before promulgating any rule under this paragraph.

(b) STATUS REPORT FOR CONSTRUCTION PERMIT AUTHORIZATION.—No later than 2 years after the date on which an application for a construction authorization is submitted under section 103(d)(2), the Nuclear Regulatory Commission shall submit a

report to the Congress describing the proceedings undertaken through such date with regard to the authorization application submitted, including a description of—

(1) major unresolved safety issues, and the Secretary's explanation of design and operation plans for resolving such issues;

(2) matters of contention regarding the application;

(3) any Nuclear Regulatory Commission actions regarding the granting or denial of the authorization.

(c) DECISION REGARDING CONSTRUCTION AUTHORIZATION APPLICATION.—Not later than 4 years after the date the initial construction authorization application is submitted under section 103(d)(2), the Nuclear Regulatory Commission shall issue a final decision granting or denying such authorization, subject to such terms and conditions as may be required or permitted by law.

STATE PARTICIPATION

SEC. 105. (a) STATE REVIEW BOARDS.—(1) The provisions of this section shall be applicable only in the case of any Nuclear Waste Repository Impact Review Board that—

(A) has the composition and authorities described in this subsection;

(B) is established under State law by any State in which there is located a site recommended to the Congress by the Secretary under section 103(a) as a potential repository site for which a characterization study should be done, or recommended under section 103(d) as the site for a repository; and

(C) is determined by the Secretary to be established in accordance with this section.

(2) Each State Review Board referred to in paragraph (1) of this subsection shall be composed as determined by the State under State law, except that the following shall be provided for by such law:

(A) The general public, any affected Indian tribe, and affected local governments shall be represented by members on the Board.

(B) The State Review Board shall have the authority to—

(i) study and determine for purposes of carrying out the Board's functions under this Act the possible economic, environmental, and social impacts, and possible impacts on public health and safety, of a repository for the disposal of high-level waste and spent fuel;

(ii) draft proposals suggesting assistance which would be required to be provided by the Federal Government to remedy or lessen the impacts identified under clause (i); and

(iii) review the activities undertaken by Federal agencies with respect to possible repository sites within the State and, as appropriate, submit relevant suggestions with regard to such activities to the Congress or appropriate Federal agencies.

(C) The State Review Board shall hold meetings open to the public not less than once every 2 months, at which meetings the Board shall receive and to the extent practicable place on its agenda matters submitted by any Board members.

(b) PARTICIPATION IN REPOSITORY LICENSING DECISIONS.—Upon the submission to the President of the recommendation of a site for a repository for the disposal of high-level waste and spent fuel, the State Review Board of the State in which the site is located may, by majority vote of the membership of the Board, submit a petition to the Congress requesting that the Congress disapprove the site designation. A State Review Board may submit such a petition to the Congress not later than the 30th day after the date that the President approves the site recommendation under section 107(b) and submits the recommendation and report of the Secretary to the Congress. A petition shall be considered to be submitted to the Congress on the date of the transmittal of the petition to the Speaker of the House and the President Pro Tempore of the Senate. The petition shall be accompanied by a statement of reasons explaining why the petition should be granted.

(c) IMPACT ASSISTANCE.—(1) After the effective date of the approval of a permit for the construction of a repository for the disposal of high-level waste and spent fuel, the State Review Board of the affected State may submit to the Congress and to the Secretary, the Secretary of Transportation, or the head of any other appropriate Federal agency a detailed request for technical or economic assistance, in such form or manner as the Board considers necessary, to mitigate the adverse impacts which will likely result from the construction or operation of the repository and to protect the health and safety of the public, together with such requests for legislative changes as the Board may consider necessary to mitigate such impacts. The Board shall submit with any such request a report which contains a detailed explanation

of the anticipated adverse impacts from the repository and the reasons that the Board has requested the assistance or legislative changes specified in the report.

(2) The head of any Federal agency which has received, within the 90-day period beginning on the effective date of the construction permit for the repository, a request for assistance under paragraph (1) from a State Review Board, or from the governing body of an Indian tribe as provided under section 106, shall submit to the Congress an evaluation of such request, including evaluations pertaining to the cost of the proposals and their feasibility, together with such recommendations for alternative or supplementary assistance or legislative changes as the agency involved may consider to be appropriate. Such evaluation and recommendations shall be submitted to the Congress within 90 days after the date of the receipt of such a request.

(d) FUNDING.—(1) Subject to paragraph (2) and to the availability of funds to carry out this section, the Secretary shall provide to each State Review Board such funds as may be necessary to provide technical assistance to the Board and to permit the Board to carry out its duties, except that at least 10 percent of the total budget of the Board shall be provided by the State from non-Federal funds as its State share. Salaries and travel expenses which would ordinarily be incurred by any State or local government shall not be considered part of the budget of the Board and shall not be eligible for payment under this section.

(2) At the end of the one-year period beginning on the effective date of any operating license for a repository in a State, no Federal funds shall be made available under this subsection for the State Review Board of the State in which the repository is located, except for—

(A) such funds as may be necessary to support Board activities related to any other repository located in, or proposed to be located in, such State, and which has not been operating under license for more than one year; and

(B) such funds as may be necessary to support Board activities pursuant to agreements or contracts for assistance entered into under subsection (c) by the Board with the Federal Government before the end of such one-year period.

(e) PARTICIPATION IN LICENSING.—A State Review Board may participate in any licensing proceedings related to repositories for the disposal of high-level waste and spent fuel which are to be located in or adjacent to the State in which the Board is constituted.

(f) CONSULTATION.—(1) The Secretary, the Nuclear Regulatory Commission, and other agencies involved in the construction or operation of a waste repository in a State shall provide to the State Review Board of such State, and to the governing body of any Indian tribe on or adjacent to whose reservation the repository site is located, timely and complete information regarding determinations or plans made with respect to the siting, development, design, construction, operation, or regulation of the repository.

(2) In performing any study of an area within a State for the purpose of determining the suitability of the area for a repository and in subsequently developing and loading any repository within a State, the Secretary shall consult and cooperate with the State Review Board of the State in an effort to resolve the State's concerns regarding the public health and safety, environmental, economic, and social impacts of any such repository. In carrying out his duties under this Act, the Secretary shall take such concerns into account to the maximum extent feasible.

(3) As soon as possible after notifying a State of his decision to study an area within such State as a possible repository site, the Secretary shall seek to enter into a written agreement with the State Review Board of the State setting forth the procedures under which the requirements of paragraphs (1) and (2) shall be carried out. The written agreement shall provide for—

(A) the right of the State to study, determine, comment on, and make recommendations with regard to the possible health and safety, environmental, economic, and social impacts of any such repository;

(B) procedures, including specific time periods, for the Secretary to receive, consider, resolve, and act upon comments and recommendations made by the State Review Board; and

(C) procedures by which the Secretary and the State Review Board of such State may review or modify the agreement periodically.

(g) STUDY TO PROVIDE IMPACT ASSISTANCE TO LOCAL COMMUNITIES.—The Secretary shall conduct a study to determine the desirability of and possible methods of imposing fees on users of the repositories to make sums available for assistance to those communities impacted by licensed repositories for the disposal of high-level waste and spent fuel. The study shall be designed to determine (1) the amount of any fee to be levied and the manner in which it would be assessed, (2) the process for determining which communities should be eligible to receive assistance with amounts generated by the fees, and (3) appropriate conditions which should be required with respect to the expenditure of assistance grants.

PARTICIPATION OF INDIAN TRIBES

SEC. 106. (a) AUTHORITIES OF TRIBAL GOVERNING BODIES.—The governing body of any Indian tribe on whose reservation is located a site recommended to the Congress by the Secretary under section 103(a) as a potential repository site for which a characterization study should be done, or recommended under section 103(d) as the site for a permanent repository, shall—

(1) have the same authorities provided to State Review Boards under section 105(a)(2)(B) and section 105(b); and

(2) be eligible for impact assistance as described in section 105(c)(1) in the same manner as State Review Boards.

(b) ASSISTANCE TO TRIBES.—Subject to the availability of funds to carry out this section, the Secretary shall provide to the governing body of each Indian tribe referred to in subsection (a) such funds as may be necessary to provide technical assistance to the tribe and to conduct the activities described under sections 105(a)(2)(B) and (C) and other similar activities related to the repository. At the end of the one-year period beginning on the effective date of any operating license for a repository located on a reservation, no Federal funds shall be made available under this subsection to the governing body of the Indian tribe on whose reservation the repository is located, except for—

(1) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such reservation, and which has not been operating under license for more than one year; and

(2) such funds as may be necessary to support activities pursuant to agreements or contracts for assistance entered into by the governing body of the Indian tribe with the Federal Government before the end of such one-year period.

(c) PARTICIPATION IN LICENSING.—The governing body of any Indian tribe shall be eligible to participate in any licensing proceedings related to repositories for the disposal of high-level waste and spent fuel which are to be located in or adjacent to the reservation of such tribe.

REVIEW OF REPOSITORY SITE SELECTION

SEC. 107. (a) POTENTIAL REPOSITORY SITES.—The designation by the Secretary, pursuant to a recommendation submitted to the Congress under section 103(a), of a site for characterization for possible disposal of high-level waste and spent fuel shall be effective unless, during the first period of 90 calendar days of continuous session of the Congress after the date of transmittal of the recommendation to the Congress, the Congress passes a concurrent resolution the matter after the resolving clause of which reads as follows: "The Congress disapproves the designation of the site at ———— for characterization for possible disposal of high-level waste and spent fuel."; (the blank space being filled with the geographic location of the proposed repository site).

(b) PRESIDENTIAL REVIEW OF SITES.—(1) The President shall review each recommendation for the location of a repository submitted by the Secretary under section 103(d), together with the accompanying report. Within 60 days after the submission of the recommendation and report, the President shall either approve the site and transmit such recommendation and report to the Congress, together with a statement recommending approval of the site for the repository, or shall disapprove the site and submit notice of the disapproval to the Secretary and to the Congress.

(2) The President may delay for not more than 6 months his decision under paragraph (1) for recommending approval or disapproval of a site upon determining that the information provided under the environmental impact statement or the characterization plan for the site is not sufficient to permit a decision within the 30 days referred to in paragraph (1).

(3) The designation of a site for a repository for high-level waste and spent fuel shall be effective at the end of the 30-day period beginning on the date that the President approves the site designation under paragraph (1) unless a State Review Board has submitted to the Congress a petition for disapproval under section 105(b) or the governing body of an Indian tribe has submitted such a petition under section 107. If any such petition has been submitted, the approval of the designation shall not be effective except as provided under subsection (c).

(c) CONGRESSIONAL REVIEW OF SITES.—(1) If the President submits to the Congress under subsection (b) a recommendation for approval of a site as a repository and either a State Review Board submits to the Congress a petition for disapproval under section 105(b) or the governing body of an Indian tribe submits to the Congress such a petition under section 106, the designation of such site for a repository for high-level waste and spent fuel shall be effective at the end of the first period of

90 calend days of continuous session of the Congress after the date of transmittal of the recommendation of approval by the President to the Congress, unless, during such period, either House of the Congress passes a resolution the matter after the resolving clause of which reads as follows: "The ———— approves the petition submitted by ———— regarding the disapproval of the site at ———— for a repository for the disposal of high-level waste and spent fuel."; (the first blank space being filled with the designation of the appropriate House of the Congress; the second blank space being filled with the name of the State Review Board or Indian tribe governing body the petition of which is approved; the third blank space being filled with the geographic location of the proposed repository site). For purposes of paragraphs (3) through (7) of this subsection, the term "resolution" means a resolution described by this paragraph.

(2) Paragraphs (3) through (7) of this subsection are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (1) of this subsection; and the provisions of such paragraphs supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(3) A resolution once introduced with respect to any site designation shall immediately be referred to a committee (and all resolutions with respect to the same site designation shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a site designation has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such site designation which has been referred to the committee.

(B) A motion of discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same site designation) and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same site designation.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a site designation, then it shall not be in order to consider in that House any other resolution with respect to the same such site designation.

(d) COMPUTATION OF DAYS.—For purposes of subsections (a) and (b) of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period.

JUDICIAL REVIEW OF AGENCY ACTIONS

SEC. 108. Notwithstanding any other provision of law, the actions taken by the Department of Energy in designating any site for characterization, in designating an initial site as a repository for the disposal of high-level waste and spent fuel, or in characterizing a site, any actions taken by the Nuclear Regulatory Commission in granting or denying any construction permit application submitted to such a facility under section 103(d)(2) or any operating permit for such a facility, and any actions described under section 10 shall not be subject to judicial review except as provided in this section as follows:

(1) Claims regarding any such action may be brought not later than the 60th day following the date of such action, except that if a party shows that the party did not know of the action complained of, and a reasonable person acting in the circumstances would not have known, he may bring a claim alleging the invalidity of such action on the grounds stated above not later than the 60th day following the date of his acquiring actual or constructive knowledge of such action.

(2) A claim under paragraph (1) of this subsection shall be barred unless a complaint is filed before the expiration of such time limits in the United States Court of Appeals for the District of Columbia, acting as a special court. Such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States or of any State shall have jurisdiction of any such claim.

(3) Any proceeding under paragraph (2) shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court, and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution.

EXPEDITED AUTHORIZATIONS

SEC. 109. (a) ISSUANCE OF AUTHORIZATIONS.—(1) Subject to paragraph (2), to the extent that the taking of any action related to the characterization, construction, or initial operation of any site recommended under this Act and not disapproved under this Act for the disposal of high-level waste and spent fuel requires a certificate, right-of-way, permit, lease, or other authorization from a Federal officer or agency, such officer or agency shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such officer or agency. All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The requirements of paragraph (1) shall not be applicable in the case of any action related to any permit or other authorization issued or granted by, or requested from, the Nuclear Regulatory Commission.

(b) TERMS OF AUTHORIZATIONS.—(1) Any authorization issued or granted under subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

(2) Except as provided in the second sentence of this paragraph, nothing contained in this section shall be construed to impair the authority of any Federal officer or agency to add to, amend, or abrogate any term or condition included in any authorization issued or granted under subsection (a) if such action is otherwise permitted under applicable laws administered by such officer or agency. In the case of any such action which is permitted but not required by law, the Federal officer or agency shall have no authority to take such action if the terms and conditions to be so added, or as so amended, would have the effect of terminating the characterization, construction, or initial operation of the potential or permanent repository which the authorization affects.

WASTE DISPOSAL FEES

SEC. 110. COLLECTION OF FEES.—(a) The Secretary shall collect fees sufficient to offset all construction, operation, administrative, and other costs incurred by the Secretary in providing for the disposal and management of nuclear wastes and spent fuel. The Secretary shall collect such fees from the persons or entities, whether public or private, who hold title to the nuclear wastes or spent fuel which is subject to disposal by the Secretary. As used in this subsection, the term "nuclear wastes" means any radioactive material (other than spent fuel) for which interim storage or disposal is provided by the Secretary.

(b) USE OF FEES.—Section 111(h) of the Energy Reorganization Act of 1974 is amended—

(1) in paragraph (1), by striking out "and" after the semicolon;

(2) in paragraph (2), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following:

"(3) revenues received by the Secretary of Energy under section 11(a) of the Nuclear Waste Disposal Act shall, when so specified in appropriation Acts, be retained and used for the specific purpose of offsetting costs incurred by the Secretary in providing for the disposal, interim storage, and management of nuclear wastes and spent fuel.".

DISPOSAL OF SPENT FUEL

SEC. 111. Notwithstanding any other provision of this Act, any repository for the disposal of high-level waste and spent fuel which is designed and constructed under this Act shall be so designed and constructed that the spent fuel may be retrieved, during an appropriate period of operation of the facility, for any reasons pertaining to the public safety or for the purpose of permitting the recovery of the economically valuable contents of the spent fuel. The Secretary shall not dispose of spent fuel in a manner which would not allow for its recovery in accordance with the preceding sentence unless specifically authorized to do so by the President.

TERMINATION OF AUTHORITY

SEC. 112. (a) SECTIONS 108 AND 109.—The provisions of sections 108 and 109 shall cease to have effect at such time as the Secretary commences licensed operation of at least one repository for the permanent disposal of high-level waste and spent fuel.

(b) REMAINDER OF SUBTITLE.—The provisions of this subtitle, other than sections 108 through 111, shall not have effect after December 31, 1999.

SUBTITLE B—LOW-LEVEL WASTE

LOW-LEVEL WASTE

SEC. 121. (a) AMENDMENT TO SECTION 11.—Section 11 of the Atomic Energy Act of 1954 is amended by adding the following new subsection at the end thereof:

"dd. The term 'low-level radioactive waste' means waste containing source, byproduct, or special nuclear material which the Commission determines, by regulation, requires disposal in accordance with sections 83, 84, and 161 x. of this Act, except that such term does not include byproduct material as defined in section 11 e. (2).".

(b) AMENDMENTS TO SECTION 274 RELATING PRIMARILY TO LOW-LEVEL WASTE.—(1)(A) Paragraph (1) of section 274 o. of the Atomic Energy Act of 1954 is amended by inserting the following before the comma at the end thereof: "in the case of byproduct material as defined in section 11 e. (2) and in the case of low-level radioactive waste".

(B) Paragraph (2) of such subsection o. is amended by—

(i) striking out "such material which" and inserting in lieu thereof "material, waste, activities, and facilities regulated by the State pursuant to the agreement, which standards"; and

(ii) by inserting ", where applicable," after "including".

(C) Paragraph (3) of such subsection o. is amended by—

(i) inserting the following after "(3)": "for the licensing and regulation of byproduct material as defined in section 11 e. (2) and low-level radioactive waste,";

(ii) striking out in subparagraph (A) "procedures under State law which include" and substituting "under State law"; and

(iii) in subparagraph (C)(iv) thereof by inserting "site closure," before "decommissioning".

(D) Subparagraph (D) of paragraph (3) of such subsection o. is amended by striking out "with respect to such material" and substituting "with respect to the material and waste to which this paragraph applies".

(E) So much of paragraph (3) of such subsection o. as follows subparagraph (D) thereof is amended by—

(A) striking out "of such material" the first place it appears and substituting "with respect to byproduct material as defined in section 11 e. (2) or low-level radioactive waste, or with respect to any site used for the disposal thereof"; and

(B) striking out "of such material" in the second place it appears and substituting "of such material, waste, or site".

(2) The penultimate sentence of section 274 c. of such Act is amended by inserting the following before the period at the end thereof: "and prior to termination of a license for disposal of low-level radioactive waste".

(3) Section 274 i. of such Act is amended by adding the following at the end thereof: "The Commission may provide technical assistance to States for purposes of aiding the States in resolving problems relating to the disposal of radioactive wastes whether or not such wastes are composed of source, byproduct, or special nuclear material.".

(c) AMENDMENTS TO SECTION 83.—(1) Section 83 of the Atomic Energy Act of 1954 is amended by striking out the heading thereof and substituting "OWNERSHIP AND CUSTODY OF CERTAIN BYPRODUCT MATERIAL, LOW-LEVEL RADIOACTIVE WASTE, AND DISPOSAL SITES.—".

(2) The item relating to section 83 in the table of contents for such Act is amended to read as follows:

"Sec. 83. Ownership and custody of certain byproduct material, low-level radioactive waste, and disposal sites.".

(3) Section 83 a. of such Act is amended by inserting before the words "shall contain" the following: "and any license issued or renewed after the date of the enactment of the Atomic Energy Act Amendments of 1980 for the disposal of low-level radioactive waste,".

(4) Section 83 a. (1) of such Act is amended by—

(A) inserting "site closure," before "decommissioning"; and

(B) inserting the following at the end thereof: "for sites at which such low-level radioactive waste is disposed of, and".

(5) Section 83 a. (2)(B) of such Act is amended by striking out "in the State" and substituting "the State".

(6) The last sentence of section 83 a. of such Act is amended to read as follows: "Any license which is in effect on the effective date of this section (in the case of byproduct material as defined in section 11 e. (2)) or on the date of the enactment of the Atomic Energy Act Amendments of 1980 (in the case of a license for the disposal of low-level radioactive waste) and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination, except that in the case of any such license, the reference in paragraph (2) to the exercise by the State of an option under subsection b. (1) shall be treated as a reference to the exercise by the State of the option under subsection b. (4)".

(7) Section 83(b)(1)(A) is amended by—

(A) striking out "(b)(1)(A)" and substituting "b. (1)(A)"; and

(B) inserting in the first sentence after "effective date of this section" the following: "(in the case of byproduct material, as defined in section 11 e. (2)) or after the date of the enactment of the Atomic Energy Act Amendments of 1980 (in the case of a license for the disposal of low-level radioactive waste)".

(8) Section 83(b)(1)(B) of such Act is amended by—

(A) striking out "of the land" and substituting "of land used for the disposal of byproduct material as defined in section 11 e. (2) which land is";

(B) striking out "under subparagraph (A) or this paragraph" and substituting "under subparagraph (A) or under paragraph (4)"; and

(C) inserting the following at the end thereof:

"(C) If the Commission determines by order that use of the surface of land used for the disposal of low-level radioactive waste transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, may permit the use of the surface of the land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred the land with the right of first refusal with respect to such use of the land."

(9) Section 83(b)(2) of such Act is amended by—

(A) striking out "title to such byproduct material and such land" and substituting "title to byproduct material, low-level waste, or land"; and

(B) striking out "custody of such byproduct material and land transferred as provided in this subsection" and substituting "custody of the byproduct material, waste, and land so transferred".

(10) Section 83(b)(3) of such Act is amended to read as follows:

"(3) If transfer to a State of title to any byproduct material, low-level waste, or land is required in accordance with this section, the State shall, following the Commission's determination of compliance under subsection c., assume title and custody to the material, waste, or land concerned. The State shall maintain the material, waste, and land so transferred in such manner as will protect the public health, safety, and the environment.".

(11) Section 83(b)(4) of such Act is amended by—

(A) striking out "such license under section 62" and substituting "license under section 62 or section 81 with respect to byproduct material as defined in section 11 e. (2)";

(B) inserting after "effective date of this section," the following: "and in the case of any license for the disposal of low-level radioactive waste which was in effect on the date of the enactment of the Atomic Energy Act Amendments of 1980"; and

(C) inserting "or material which is low-level radioactive waste" immediately after the words "such byproduct material".

(12) Section 83(b)(5) of such Act is amended by striking out "date of the enactment of this Act" and substituting "date of the enactment of the Uranium Mill Tailings Control Act of 1978".

(13) Section 83(b)(6) is amended by striking out "this subsection" and substituting "this section".

(14) Section 83(b)(7) of such Act is amended by—

(A) striking out the first sentence thereof and substituting "Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer)." and substituting "Material, low-level radioactive waste, and land transferred to the United States or to a State in accordance with this subsection and subsection a. shall be transferred without cost to the United States or to the State (other than administrative and legal costs incurred in carrying out such transfer).";" and

(B) striking out "Subject to" and substituting "In the case of byproduct material as defined in section 11 e. (2) and land used for the disposal thereof, subject to".

(14) The following provisions of section 83 of such Act are each amended by inserting "or any low-level radioactive waste" immediately after the words "as defined in section 11 e. (2)" each place they appear in subsection a. (2), subsection b. (1)(A), and subsection b. (6) and (8).

(15) Section 83 c. of such Act is amended to read as follows:

"c. No license to which this section applies may be terminated until the Commission has made a determination that the licensee has complied with the requirements of subsection a. and any other applicable decommissioning and site closure requirements.".

(d) AMENDMENTS TO SECTION 84.—(1) Section 84 of such Act is amended in the heading thereof by inserting "and Low-Level Radioactive Waste" after "Material".

(2) The item relating to section 84 in the table of contents for such Act is amended by inserting "and Low-Level Radioactive Waste" after "Material".

(3) Section 84 a. of such Act is amended by redesignating subsection b. as c. and by inserting the following new subsection after subsection a.:

"b. (1) The Commission shall insure that the disposal of any low-level radioactive waste is carried out in such manner as the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the possession and disposal of such waste.

"(2) The Commission may provide for the disposal of low-level radioactive waste at sites which are located within or adjacent to sites at which hazardous waste is disposed of pursuant to the Solid Waste Disposal Act, or at sites classified as sanitary landfills under criteria promulgated under section 4004 of that Act, where the Commission determines, in consultation and coordination with the Administrator of the Environmental Protection Agency, that the disposal of low-level radioactive waste at such sites is feasible and will not unduly endanger public health and safety or the environment.

"(3) The Commission may, in consultation with the Administrator of the Environmental Protection Agency, promulgate rules and regulations designating concentra-

tions or levels of activity for low-level radioactive waste which may be disposed of in hazardous waste disposal sites for which a permit has been issued under subtitle C of the Solid Waste Disposal Act or in sites classified as sanitary landfills under criteria promulgated pursuant to section 4004 of the Solid Waste Disposal Act.".

(4) Section 84 c. of such Act, as redesignated by paragraph (3) of this Act, is amended by—

(A) striking out "such byproduct material" and substituting "material or waste to which this section applies";

(B) striking out "other than the United States or any officer or employee of the United States or a State" and substituting "(other than the United States or a State or any officer or employee of the United States or a State)"; and

(C) striking out "as violations" and substituting "as provided in the case of violations".

(e) AMENDMENTS TO SECTION 161 x.—Section 161 x. of the Atomic Energy Act of 1954 is amended—

(1) in paragraph (1) thereof by—

(A) inserting "or for disposal of low-level radioactive waste," after "as defined in section 11 e. (2),";

(B) inserting "site closure," before "decommissioning"; and

(C) by inserting "or used in conjunction with the disposal of such low-level radioactive waste," after "as so defined";

(2) by striking out "and" at the end of paragraph (2)(A), by striking out the period at the end of paragraph (2)(B) and substituting "; and", and by adding the following new subparagraph at the end of paragraph (2):

"(C) in the case of each license for the disposal of low-level radioactive waste (whether in effect on the date of the enactment of this subparagraph or issued or renewed thereafter), if the Commission determines that any long-term maintenance or monitoring, or both, is necessary, the licensee, before termination of the license, will make available such bonding, surety, or other financial arrangements as may be necessary to assure the necessary long-term maintenance or monitoring, or both."; and

(3) in so much of such subsection x. as follows paragraph (2) thereof, by—

(A) inserting "site closure" before "decommissioning"; and

(B) striking out "to carry out subparagraphs (1) and (2)" and substituting "to carry out paragraphs (1) and (2)".

STATE AUTHORITIES AND RESPONSIBILITIES RELATING TO DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

SEC. 122. (a) AMENDMENT OF ATOMIC ENERGY ACT OF 1954.— Chapter 8 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:

"SEC. 85. STATE AUTHORITIES AND RESPONSIBILITIES RELATING TO DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE.—a. After the date five years following the date of the enactment of this section, the Commission shall not grant a general or specific license or an exception from licensing under this Act for the interstate transportation for the purpose of disposal of source material, special nuclear material, or by-product material which under the regulations of the Commission may be disposed of by the shallow land burial method unless the State from which the transportation originates has entered into an agreement or compact with the State in which disposal is to occur relating to the management and disposal of such waste.

"b. Each State in which low-level radioactive waste is generated is hereby authorized to enter into such agreements and compacts with other States as may be necessary to establish facilities for the disposal of low-level radioactive waste."

(b) TABLE OF CONTENTS.—The table of contents for such chapter 8 is amended by adding the following new item at the end thereof:

"Sec. 85. State authorities and responsibilities relating to disposal of low-level radioactive waste.".

ASSISTANCE FOR STATES UNDER STATE AGREEMENTS

SEC. 123. (a) FUNDS AUTHORIZED.—The Secretary of Energy may make funds available to any States which have entered into agreements to provide for the safe disposal of low-level radioactive waste generated or to be disposed within such States. Any State which desires to receive funds or technical assistance under this section for the planning, construction, or operation of facilities for the disposal of such wastes shall submit to the Secretary of Energy an application therefor at such time, in such manner, and containing such information as the Secretary may require.

(b) LIMITATIONS ON EXPENDITURES.—No funds may be made available under this section except to such extent or in such amounts as may be provided in advance in appropriation Acts.

TITLE II—NUCLEAR SAFETY BOARD

FINDINGS AND PURPOSES

SEC. 201. (a) FINDINGS.—The Congress finds that—

(1) there is a great need for—

(A) vigorous investigation of events at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission; and

(B) continual review and assessment of licensing and other regulatory practices of the Nuclear Regulatory Commission, which assessment may result in conclusions critical of the Nuclear Regulatory Commission or its officials; and

(2) no Federal agency can properly perform such functions unless it is independent of all other agencies and instrumentalities of the United States.

(b) PURPOSE.—It is the purpose of this title to establish a Nuclear Safety Board as an independent establishment in the executive branch of the United States, which shall promote nuclear safety by conducting independent investigations of events at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission and by recommending to the Nuclear Regulatory Commission improvements in licensing and related regulatory practices.

NUCLEAR SAFETY BOARD

SEC. 202. (a) ESTABLISHMENT.—There is established the Nuclear Safety Board (hereinafter in this title referred to as the "Board"), which shall be an independent establishment in the executive branch of the United States. The Board shall have a seal which shall be judicially recognized.

(b) APPOINTMENT.—(1) The Board shall be composed of 3 members appointed by the President, by and with the advice and consent of the Senate, from among persons who are not officers or employees of the Federal Government. No more than 2 members of the Board shall be of the same political party. The President shall submit to the Senate not later than 90 days after the date of the enactment of this Act his recommendations for appointment to the Board.

(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

(c) CHAIRMAN AND VICE CHAIRMAN.—(1) The Chairman and Vice Chairman of the Board shall be designated by the President. The terms of office of the Chairman and Vice Chairman shall be 2 years and shall run concurrently. The Chairman and Vice Chairman may be reappointed to such offices.

(2) The Chairman shall be the chief executive officer of the Board and shall, subject to such policies as the Board may establish, exercise the functions of the Board with respect to—

(A) the appointment and supervision of personnel employed by the Board;

(B) the organization of any administrative units established by the Board; and

(C) the use and expenditure of funds.

The Chairman may delegate any of his functions under this subparagraph to any other member or to any appropriate agent of the Board.

(3) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

(d) TERMS.—(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of 6 years. Members of the Board may be reappointed.

(2) Of the members first appointed—

(A) one shall be appointed for a term of 2 years;

(B) one shall be appointed for a term of 4 years; and

(C) one shall be appointed for a term of 6 years;

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(4) Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(e) QUORUM.—Two members of the Board shall constitute a quorum, but a lesser number may hold hearings.

(f) BASIC PAY.—(1) Members of the Board other than the Chairman shall each be paid at a rate equal to the rate of basic pay payable for level IV of the Executive Schedule. The Chairman shall be paid at a rate equal to the rate of basic pay payable for level III of the Executive Schedule.

(2) While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

STAFF AND SUPPORT SERVICES

SEC. 203. (a) STAFF.—(1) Subject to such rules as may be prescribed by the Board, the Chairman may appoint and fix the pay of such officers and employees (including investigators and attorneys) as the Chairman considers necessary to carry out the powers and duties of the Board. Appointments shall be made under this paragraph in such manner that not more than the equivalent of 50 full-time officers and employees are employed by the Board at any time.

(2) The staff of the Board shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for grade GS-18 of the General Schedule. The amount of consultant services which may be obtained by the Board under this subsection shall not exceed, during any fiscal year period, the amount of services which would be obtained if the Board procured on a full-time basis the services of 12 consultants.

(c) STAFF AND SUPPORT SERVICES OF FEDERAL AGENCIES.—(1) Upon request of the Board, the Nuclear Regulatory Commission and the head (or governing authority) of any other Federal agency or instrumentality may—

(A) detail to the Board, on a reimbursable basis such personnel as may be desirable to assist the Board in carrying out its duties; and

(B) make available to the Board, on a reimbursable basis, such facilities, equipment, or other administrative support services as may be desirable to assist the Board in carrying out its duties.

(2) The General Services Administration shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

(d) SUPPORT SERVICES OF STATE OR LOCAL AGENCIES.—The Board may confer with employees of State or local government agencies and may use, on a reimbursable basis, such services, records, and facilities as such agencies may make available to the Board.

(e) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) GIFTS AND VOLUNTARY SERVICES.—Notwithstanding any other law, the Commission may accept—

(1) voluntary, uncompensated services; and

(2) gifts or donations of money or other property of any type.

DUTIES OF THE BOARD

SEC. 204. The Board shall have the following duties and authorities:

(1) The Board shall investigate those events at any facility, or involving any materials, licensed or otherwise regulated by the Nuclear Regulatory Commission, which the board determines to be significant because of possible effects on the health or safety of the public or because such events could be the precursors of events affecting the health or safety of the public. The Board may request the Nuclear Regulatory Commission to make investigations with regard to such events and to reports its findings to the Board. Whenever the Nuclear Regulatory Commission makes such an investigation, the Board shall analyze the findings of the Commission for purpose of makings its own conclusions and recommendations. The purpose of any investigation under this paragraph shall be—

(A) to ascertain information concerning the circumstances of the event involved, and its implications for the public health and safety; and

(B) to determine whether such event is part of a pattern of similar events at facilities, or involving any materials, licensed or otherwise regulated by

the Nuclear Regulatory Commission which could significantly affect the public health or safety or which could be the precursor of events which could significantly affect the public health or safety.

(2) The Board shall systematically analyze operational data from any facility, or involving any materials, licensed or otherwise regulated by the Nuclear Regulatory Commission to determine whether there exist certain patterns of events that indicate safety problems.

(3) The Board may conduct special studies pertaining to the nuclear safety at any facility, or involving any materials, licensed or otherwise regulated by the Nuclear Regulatory Commission.

(4) The Board may evaluate suggestions received from the scientific and industrial communities, and from other knowledgeable sources, on specific measures to improve safety at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission.

(5) The Board shall recommend to the Nuclear Regulatory Commission those specific measures that should be adopted to minimize the likelihood that events will occur at any facility, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission which could significantly affect the public health or safety.

(6) The Board shall establish reporting requirements binding upon—

(A) persons who operate, design, supply, maintain, or are otherwise involved with the operation or construction of, facilities licensed or otherwise regulated by the Nuclear Regulatory Commission;

(B) persons who process, store, transport, use, or possess materials licensed or otherwise regulated by the Nuclear Regulatory Commission; and

(C) persons who export nuclear equipment pursuant to any license or permit issued by the Nuclear Regulatory Commission.

The information which the Board may require to be reported under this paragraph may include any materials designated as classified material pursuant to the Atomic Energy Act of 1954, or any materials designated as safeguards information and protected from disclosure under section 147 of the Atomic Energy Act of 1954.

(7) The Board shall issue periodic reports which shall be made available to the Congress, and to Federal, State, and local government agencies concerned with safety at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission. Upon request, such reports shall be made available to other interested persons. Such reports shall contain recommendations of specific measures to reduce the likelihood of occurrence of nuclear events similar to those investigated by the Board and of corrective steps to make any facilities investigated by the Board as safe as is possible.

(8) The Board shall establish a monitoring center for the purpose of receiving reactor data on an instantaneous or otherwise timely basis from each nuclear powerplant licensed under the Atomic Energy Act of 1954. The monitoring center shall be staffed by officers or employees of the Board who shall be responsible for (A) analysing the data so received in order to determine whether any potentially dangerous situation exists at any of the facilities transmitting the data, and (B) making appropriate recommendations to the operators of nuclear powerplants when it is determined that such a situation does exist.

SPECIFIC POWERS OF THE BOARD

SEC. 205. (a) HEARINGS.—(1) The Board may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. The Board may administer oaths or affirmations to witnesses appearing before it.

(2) Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) SUBPENA POWER.—The Board may issue subpenas (under the signature of the Chairman or his delegate) requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Board. The attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of hearing in the United States. The subpenas of the Commission shall be served in the manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedures for the United States district courts.

(c) INSPECTION AUTHORITY.—Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, may enter any facility licensed or otherwise regulated by the Nuclear Regulatory Commission, and any property containing materials licensed or otherwise regulated by the Nuclear Regu-

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latory Commission, in which an event has occurred which, in the determination of the Board, has significant implications for the public health or safety, and do all things appropriate for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available to the public, subject to the limitation contained in section 207(a)(2).

(d) AUTOPSY AND OTHER MEDICAL INFORMATION.—The Board shall be furnished, upon request, with or without reimbursement, a copy of the report of any autopsy performed by State or local officials on any person who dies as a result of having been involved in any nuclear accident. The Board may order an autopsy (if an autopsy has not been made) or seek such other tests of survivors involved in such accidents (subject to their approval) as may be necessary to the investigation of the accident. To the maximum extent consistent with the need of the investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(e) ENFORCEMENT AUTHORITY.—(1) If any person who is issued a subpena under subsection (c), required to submit to an inspection under subsection (d), or issued any other order by the Board under this title, is guilty of contumacy, refuses to obey such subpena or other order, or refuses to submit to such inspection, any court of the United States within the judicial district within which the hearing or inspection involved is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to comply with the subpena, inspection notice, or other order, as the case may be. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(2) All process of any court to which application may be made under this subsection shall be served in the judicial district in which the person required to be served resides or may be found.

(f) IMMUNITY; USE OF REPORTS AS EVIDENCE.—(1) For purposes of sections 6002 and 6004 of title 18, United States Code, the Commission shall be considered to be an agency of the United States.

(2) No part of any report or recommendation issued by the Board relating to any nuclear accident or any investigation conducted by the Board shall be admitted as evidence in any court, or otherwise used in any action for damages arising from any matter mentioned in such report.

GENERAL ADMINISTRATIVE POWERS OF THE BOARD

SEC. 206. (a) OBTAINING OFFICIAL DATA.—(1) Subject to section 552a of title 5, United States Code, the Board may secure directly from any agency or instrumentality of the United States such information as may be necessary to enable it to carry out this title. Upon request of the Chairman of the Board, the head of such department or instrumentality shall furnish such information to the Board. The information which the Board may secure under this paragraph may include any material designated as classified material pursuant to the Atomic Energy Act of 1954, or any materials designated as safeguard information and otherwise protected from disclosure under section 147 of the Atomic Energy Act of 1954.

(2) The Board may conduct an inquiry to secure data with respect to any matter pertinent to nuclear safety, upon publication of notice of such inquiry in the Federal Register. The Board may by order of the Board require Federal, State, or local governmental agencies, or any person engaged in interstate commerce, to submit written responses to any requests for information made by the Board with regard to matters within the jurisdiction of the Board. Such responses shall be submitted to the Board in such form, and within such reasonable period of time, as the Board may require. Copies of such responses shall, subject to the limitations contained in section 207(a)(2), be made available for inspection by the public.

(b) DELEGATION.—Any member or agent of the Board (including officers, employees, and administrative law judges assigned to the Board) may, if so authorized by the Board, take any action which the Board may take under this title.

(c) CONTRACTING AUTHORITY.—Without regard to section 3709 of the Revised Statutes, the Board may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions of the Board, including contracts with public or private nonprofit entities for the conduct of studies related to its functions.

(d) LIAISON.—The Board may designate representatives to serve or assist on such committees as the Chairman determines to be appropriate to maintain effective liaison with other Federal agencies, with State and local government agencies, and

with independent standard-setting bodies carrying out programs and activities related to safety at facilities regulated by the Nuclear Regulatory Commission.

(e) ADVISORY COMMITTEES.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App. I), the Board may appoint one or more advisory committees composed of qualified citizens (including officers or employees of Federal, State, or local governments) as the Board considers appropriate to assist the Board in conducting its functions.

(f) RULES AND REGULATIONS.—The Board may establish such rules and regulations as may be necessary to the exercise of its functions. Nothing contained in this title shall be construed to authorize the Board to promulgate rules or regulations other than those related to (1) the reporting functions of the Board as described under sections 204 and 205, or (2) personnel or other internal administrative affairs of the Board.

PUBLIC ACCESS TO INFORMATION

SEC. 207. (a) IN GENERAL.—(1) Copies of any communication, document, or other item of information received or transmitted by the Board (or by any member or employee of the Board upon authority of the Board) shall be made available to the public upon request, and at a reasonable cost, unless such information may not be publicly released pursuant to paragraph (2) of this subsection.

(2) The Board shall not disclose information obtained under this title which concerns or relates to any trade secret referred to in section 1905 of title 18, United States Code, except as permitted under subsection (b) of this section. Any information obtained by the Board which is considered to be safeguards information (as described under section 147 of the Atomic Energy Act of 1954) may not be disclosed by the Board unless disclosure of such information would be permitted by the Nuclear Regulatory Commission pursuant such section, and no material obtained by the Board which is designated as classified material pursuant to such Act may be disclosed. Nothing contained in this section shall be considered to require the release of any information described by section 552(b) of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) EXCEPTIONS.—The Board may disclose information obtained under this title which concerns or relates to any trade secret referred to in section 1905 of title 18, United States Code, only in a manner designed to preserve confidentiality and only—

(1) upon request, to other Federal agencies or instrumentalities for official use;

(2) upon request, to any committee of the Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice to any interested person to whom the information pertains and an opportunity for such person to comment in writing, or orally in closed session, on such proposed disclosure (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

SUBMISSION OF CERTAIN INFORMATION TO THE CONGRESS

SEC. 208. Whenever the Board transmits to the Office of Management and Budget or to the President any budget estimate (or other budget information), any legislative recommendation or comment on legislation, or any testimony prepared for Congressional hearings, the Board shall concurrently transmit a copy thereof to the Congress. No officer or employee of the United States shall have any authority to require the Board to submit the items referred to in the preceding sentence to any officer or employee of the United States for approval or review before submission of such items to the Congress in accordance with this section.

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 209. (a) RESPONSES REQUIRED.—Whenever the Board submits a recommendation regarding nuclear safety to the Nuclear Regulatory Commission, such Commission shall submit to the Board a written response to each such recommendation not later than 90 days after receipt thereof. The response made by the Nuclear Regulatory Commission shall indicate whether such Commission intends to conduct procedures for adopting such recommendation in whole or in part, and the timetable proposed by the Commission for conducting such procedures. In the case of any recom-

mendation which such Commission does not intend to adopt in its entirety, the Commission shall explain in detail the reasons for its determination not to adopt all, or part, of the recommendation (as the case may be).

(b) PUBLIC DISCLOSURE.—The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost. Such notice shall include the contents of each such recommendation or response, as the case may be.

CIVIL PENALTIES

SEC. 210. (a) AMOUNT.—Any person who violates any reporting requirement established under section 204(6) shall be liable to the United States for a civil penalty in an amount not to exceed $5,000 for each such violation. Each day such a violation continues shall, for purposes of this section, constitute a separate violation of such section.

(b) HEARING.—A civil penalty for a violation of section 204(6) shall be assessed by the Board by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Board shall give written notice to the person to be assessed a civil penalty under such order of the Board's proposal to issue such order and shall provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(c) MODIFICATION.—The Board may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this section. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

JUDICIAL REVIEW

SEC. 211. Any order issued by the Board under this title shall be subject to review by the appropriate court of appeals of the United States, or the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after the entry of such order by any person aggrieved by the order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code.

ANNUAL REPORT

SEC. 212. The Board shall report to the Congress on July 1 of each year. Such report shall include—

(1) a statistical and analytical summary of the investigations conducted and reviewed by the Board during the preceding calendar year;

(2) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of occurrence of events which could significantly affect the health or safety of the public, together with any response to such recommendations made by the Nuclear Regulatory Commission;

(3) a detailed appraisal of the steps undertaken by the Nuclear Regulatory Commission to investigate and prevent nuclear accidents potentially harmful to the public health and safety;

(4) such recommendations for legislative and administrative actions relating to nuclear safety as the Board considers desirable; and

(5) such other matters as the Board considers appropriate to include in the report.

SUNSET PROVISIONS

SEC. 213. The Board shall cease to exist 6 years after the date of the enactment of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 214. There are authorized to be appropriated to carry out this title $2,600,000 for each of the fiscal years ending September 30, 1981, and September 30, 1982. Such sums shall remain available until expended.

Amend the title so as to read:

A bill to provide for repositories for the disposal of high level nuclear waste and spent fuel, to amend provisions of the Atomic Energy Act of 1954 relating to low-level waste, to provide for a Nuclear Safety Board, and for other purposes.

Purpose of the Bill

The purpose of H.R. 6390 as reported by the Committee is two-fold:

(1) To establish programs for the development and regulation of repositories for the safe permanent disposal of high-level and low-level nuclear waste and spent fuel, and

(2) To create a new independent agency to investigate events related to nuclear safety at facilities or involving materials or activities licensed by the Nuclear Regulatory Commission.

Background

H.R. 6390 was an outgrowth of an extensive Committee inquiry into major nuclear issues. The inquiry was rooted in an accident on March 28, 1979 at the Three Mile Island (TMI) nuclear generating station near Middletown, Pennsylvania. The accident shook public confidence in the safety of nuclear technology and elicited substantial concern within the Committee regarding the adequacy of the Commission's regulatory and enforcement procedures. The Committee, which has primary jurisdiction over nuclear regulation, undertook a series of hearings to review the status of nuclear technology, problems in nuclear regulation and the post-TMI viability of the nuclear industry. The hearings have been published as Serial No. 96-8: Oversight Hearings on Major Nuclear Issues, and include the following volumes:

Part I—Task Force Investigation of Accident at Three Mile Nuclear Powerplant.

Part II—Accident at the Three Mile Island Nuclear Powerplant (hearings).

Part III—Oversight on the Nuclear Regulatory Process.

Part IV—Oversight on Security in the Domestic Nuclear Industry.

Part V—Oversight on Public Participation and Equity in Nuclear Waste Facility Siting.

Part VI—Oversight on Liability for Nuclear Accidents.

Part VII—Oversight on Nuclear Economics.

Part VIII—Oversight on National and Regional Power Needs Through the Year 2000.

Part IX—Oversight on NRC Agreement States Program.

Part X—Oversight on Nuclear Nonproliferation.

Part XI—Oversight on Industry's Response to the Accident at Three Mile Island.

These oversight hearings, together with hearings on nuclear waste management issues on January 25 and 26, 1979, provided the foundation for development of H.R. 6390.

H.R. 6390 was introduced January 31, 1980 and was referred to this Committee and to the Committee on Interstate and Foreign Commerce. This year the Subcommittee on Energy and the Environment conducted hearings on the legislation on March 13, 14, and 18, and on May 12. The Subcommittee held markups of the bill on June 3, 12, and 26, and on July 29 and 31. On Wednesday, Sep-

tember 10 the Committee by unanimous consent discharged the bill from Subcommittee.

Committee Recommendation

On September 16, 1980, the Committee, by voice vote, recommended that H.R. 6390, as amended be enacted.

Committee Action

The Committee deleted all but Title II and Title IV of the bill as introduced. These titles reported in H.R. 6390 provide for management of high-level and low-level nuclear wastes and for creation of a new idependent agency to investigate events related to nuclear safety. This action was taken without prejudice against those provisions in H.R. 6390 which were not reported. Titles were deleted in the interest of reporting those titles which could be considered and recommended to the House in time to be eligible for action by the full House during the 96th Congress.

Titles which were not reported include provisions to resolve issues relating to the siting of nuclear power plants; revisions of the Price-Anderson Nuclear Insurance Act; a requirement that the Nuclear Regulatory Commission propose for Congressional consideration new baseline standards for nuclear regulation; a proposal to delay issuance of new construction permits for nuclear power plants until the Commission has made a determination that the lessons of the accident at the Three Mile Island nuclear generating station have been incorporated in its operations; amendments to the Agreement States Program; Federal funding for public participation in Commission rulemaking proceedings, and standards for emergency planning for nuclear plants.

Certain of these provisions have been enacted in other legislation by the 96th Congress.

Similar to sec. 111 of H.R. 6390 as introduced, Sec. 108 of Public Law 96-295 directs the Commission to develop and promulgate regulations establishing demographic requirements for the siting of utilization facilities. In fact, Sec. 108 of Public Law 96-295 was substantially drived from Sec. 111 of H.R. 6390.

Public Law 96-295 prohibits the Commission from issuing a construction permit for a nuclear plant after the new siting regulations are promulgated unless the facility complies with the requirements set forth in those regulations. This makes it clear that compliance with remote siting requirements, once they have been promulgated under this section, is a condition for the issuance of new construction permits.

The Act requires the new siting regulations to specify demographic criteria including maximum allowable population density and population distribution for zones surrounding the facility. The regulations must establish such zones independent of considerations about plant design, engineering, or other differences among facilities.

Section 102 of H.R. 6390 as introduced, addressed two primary issues related to emergency planning around nuclear power plants. First, the Atomic Energy Act of 1954 would have been amended for the purpose of clarifying the relative role which the NRC and the

Federal Emergency Management Agency (FEMA) are to play in the nuclear licensing process. Second, section 102 required the promulation of regulations that would link the issuance of operating licenses for new power reactors with the existence of Federally approved state and local radiological emergency plans. This second issue has been substantially addressed in section 109 of Public Law 96-295 (NRC authorizing legislation for fiscal year 1980). Like section 102 of H.R. 6390, section 109 of Public Law 96-295 directs the NRC to establish, by rule, standards for state plans to respond to radiological emergencies and to review and assess the adequacy of each state's plan. The standards will replace the guidelines for State and local emergency response plans in NUREG-75/111 (Dec. 1, 1974) and Supplement 1 (Mar. 15, 1977), and the interim criteria in NUREG-065-41/FEMA-REP-1.

Similar to the intended effect of section 102 of H.R. 6390 as introduced, section 109 of Public Law 96-295 provides that the NRC is to issue an operating license for a new utilization facility only if the State or local plan, as it applies to such facility, complies with the NRC's current guidelines for such plans or the new rules when promulgated, except that if a State or local plan does not exist that complies with the guidelines or rules, Public Law 96-295 provides that NRC still may issue an operating license if it determines that a State, local or utility plan provides reasonable assurance that public health and safety is not endangered by operation of the facility.

Section 109 of Public Law 96-295 reflects careful consideration of the role FEMA should play in the promulgation of new rules for, and the assessment of the adequacy of, State and local emergency plans. The Congress also recognizes the present agreements between NRC and FEMA regarding responsibility for developing requirements for State and local emergency plan and for assessing compliance with those requirements.

Section 109 of Public Law 96-295 recognizes FEMA's potential capability to coordinate off-site response to a radiological emergency. Unlike section 102 of H.R. 6390 as introduced, Public Law 96-295 does not delineate a more specific statutory role for FEMA.

Underlying both section 109 of Public Law 96-295 and section 102 of H.R. 6390 is the congressional intent that ultimately every nuclear power plant will have applicable to it a State emergency response plan that provides reasonable assurance that the public health and safety will not be endangered in the event of an emergency at such plant requiring protective action.

The Committee intends to continue work on other of the provisions of H.R. 6390 which were not reported. In particular, revisions of the Price-Anderson Nuclear Liability Act have been redrafted by Mr. Bingham and Mr. Udall, and introduced by them as H.R. 8179 for consideration this year.

Development of Permanent Repositories

The decided emphasis of the Committee was on formulating a certain, Congressionally mandated pathway to development of permanent repositories for the disposal of high-level wastes. An amendment to authorize construction of long-term storage vaults, or Retrievable Surface Storage Facilities (RSSF's), was defeated due

to the potential for such facilities to allow slippage in the momentum to establish facilities which will isolate wastes from the biosphere for periods of time adequate to permit decay of the hazardous materials in the waste. The Committee has repeatedly noted delays in the repository development program. Statutory establishment of a framework for decision-making, facility construction, and facility licensing is expected to provide certainty that permanent repositories will come on line within a reasonable period of time.

The Committee's approach to the repository development framework is built primarily on the program recommended by the President's Interagency Review Group on Nuclear Waste Management (IRG). The IRG moved the country substantially forward in identification of the institutional, social and technical problems which have plagued the national waste management program. Provisions in H.R. 6390 for public and state participation, agency action and repository development rely heavily on the work of that group.

A second major basis for formulation of the repository program was Congressional action on other major energy projects, such as the Alaska Natural Gas Transportation Act. A strong Congressional decision-making role is proposed, along with a framework of deadlines for necessary agency actions, expedited Federal permitting, and expedited judicial review. The objective is to assure that all relevant issues are thoroughly considered, but that potential delays are minimized.

Repository Development Schedule

Deadlines for agency actions and requirements for review of agency decisions related to repository development are provided in the Committee amendment. The schedule represented by the amendment is as follows:

By 1985—DOE selects four sites potentially suitable for development as licensed high-level waste repositories and reports to Congress regarding selection. This selection is declared not to be a major Federal action under NEPA. DOE continues search for new sites for future repositories. Sites are deemed approved for expedited permitting unless Congress passes a resolution of disapproval of a site.

1982-87—For each site selected above, DOE submits to NRC required site characterization plans and waste form proposals. All shaft sinking and testing will be conducted in consultation with NRC within the Commission's licensing procedural requirements.

March 30, 1988[1]—DOE submits to the President a report nominating a site for license application along with a final EIS on the site and an explanation of how the site was chosen.

April 30, 1988—The President approves or disapproves the nomination by DOE, or may delay the decision 60 days. If the President disapproves, DOE must submit new recommendation within one year. The President reports to Congress regarding decision.

May 30, 1988—State Board or Indian Tribe may have exercised right to object to approval of repository site. If so, if either House of Congress affirms the objection by resolution within 90 days, the site selection is not approved and another must be nominated.

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[1] The approval system remains available for all repository site nominations through December 31, 1999.

August 1988—If site is not disapproved, DOE submits license application to NRC.[2] For approved sites, all subsequent Federal permits or judicial challenges are subject to expedited treatment.

August 1990—NRC reports to Congress on status of construction permit.

August 1992—NRC must make final decision on construction permit.

Late 1996—Repository in operation, subject to construction contingencies.

Low-Level Waste Management

A national crisis has developed over the past several years in availability of disposal capacity for low level nuclear wastes. The Committee has investigated the regulatory and political problems leading to the shut-down of some operating burial grounds, and the lack of applications for licenses to operate facilities at new sites. The burden of disposing of low-level nuclear wastes has been left with three remaining states in which sites are still operating: Washington, Nevada and South Carolina. The governors of those states have indicated they will not continue accepting wastes from other states if national progress is not made in creating new sites, and in more evenly distributing the burden of low-level waste disposal.

H.R. 6390 provides improvements in low-level waste burial regulation, and incentives for states to develop new sites. Authority is provided for states to form compacts to organize regional disposal facilities. States which enter into agreements to share disposal facilities may apply to the Secretary of Energy for funds and technical assistance for facility development.

Regulatory changes would make low-level waste burial standards consistent with those now in effect for uranium mill tailings. Regulatory emphasis is on the development and operation of sites in a manner which would help preclude need for long-term, post-operation maintenance of the site area. Bonds are required to be provided to assure that sites can be decommissioned before license termination. After a burial ground closure, the site would be required to be turned over to either State (at the option of the State) or Federal ownership to assure long-term protection.

The combination of the regulatory and site development programs are intended to encourage development of new burial grounds on a regional basis. Primary responsibility for low level waste burial is determined to lie with the States. States were determined to be better capable of the planning and monitoring functions relevant to low level waste.

Authorizations and Judicial Review

The Committee amended H R. 7418 to provide for expedited Federal agency decisions and expedited judicial review of such decisions regarding candidate repository sites. Neither agency nor judicial decisions are limited in scope under the amendment, but permits and court challenges are required to be treated as very high

[2] Expedited permitting provisions for approved sites remain applicable until at least one licensed repository is operating.

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priorities. The Committee notes that repository site development and licensing are expected to be technically cumbersome. Expediting provisions as included in the amendment will be necessary to prevent constant slippage in repository development schedules.

Licensing action by the Nuclear Regulatory Commission is exempted from the expediting language applicable to other Federal agencies. A specific deadline is set, however, by which the Commission must have made a final decision regarding a repository license application, four years after such application is applied for.

State Participation

H.R. 6390 provides a vehicle for state participation in site selection activities conducted by the Secretary in the state. When the Secretary recommends a site as the subject of a characterization study, or recommends a site which is qualified for application to be licensed, the state in which that site is located is authorized to form a State Review Board to facilitate the two-way information exchange between the state—including individual residents and local governments—and the Secretary and the Nuclear Regulatory Commission.

The Board is required to be composed according to the law of the particular state, but must include representatives of the public, affected local governments, and affected Indian tribes. The Secretary is required to notify the state that the Board has been composed according to section 105.

The Board then has the authority to represent state interests in matters pertaining to the recommended site, including studying the impacts of the proposed site on the state and drafting proposals aimed at mitigating adverse effects. The Secretary is directed to enter into a written agreement with the Board to set up the procedure for the information exchange, including the Board's role in reviewing and commenting on the Secretary's plans, and the Secretary's response to the Board's comments. This agreement is intended by the Committee to facilitate the establishment of a working relationship between the Board and the Secretary for the interchange of information, ideas, and comments.

The Committee views the role of the state in decisions and activities undertaken by the Secretary under this bill as vital to protect the State's legitimate interests and ensure the success of the site activities. The Board is directed to hold open hearings not less than once every two months in order to receive information from the public, and inform the public of activities and plans undertaken by the Secretary or proposed to be undertaken. The Board, being composed of representatives of area residents and affected local governments, will be best able to access health, safety, environmental, economic, and social impacts of the site, communicate them to the Secretary, and assist in the planning and designing of the repository in order to minimize the adverse impacts. The Committee does not intend for the Board to assume the Secretary's duties under this bill; rather the Board's input into the activities is designed to ensure the success of the repository selection and construction process while minimizing the effects on the people and the environment of the state.

To further this end, subsection (e) clarifies the Committee's intention that the Board will play a role in licensing proceedings related to repositories in the state. Subsection (f) directs the Commission, the Secretary, and other involved agencies to provide the Board with timely and complete information, and to consult and cooperate with the Board in an effort to resolve the State's concerns.

The State may appeal a recommendation by the Secretary that a repository be built within its borders through the procedures outlined in section 105(b) and section 107(c). Upon a majority vote of the members of the Board, a petition would be sent to Congress explaining the reasons that the Board opposes the location of a repository at the site recommended by the Secretary. The Board has thirty days from the date that the President approves the site recommendation in which to file its petition.

The Committee considered several options pertaining to the type and extent of Congressional action on the State petition. As reported, the bill provides that the State petition will be granted if either House of Congress adopts a resolution affirming the state's petition, in effect disapproving the recommended site. Using this procedure either the Senate or the House of Representatives can adopt a resolution agreeing with the state that the repository should not be constructed at the site recommended by the Secretary, thus equalizing the positions of densely populated and sparsely populated states.

Section 107(c) provides for expedited procedures so that Congress can consider the State's petition without delay. Included in the expediting procedures is a prohibition against amendments, speedy consideration by the appropriate committee, the time limits for debate on the petition.

The Committee deliberately provided that the State appeal mechanism begin at an early enough time in the Secretary's planning and site selection activities so that alternative sites will still be available and before significant resources are expended. The Committee's intention is to allow Congress to consider a State's petition is to allow Congress to consider a State's petition on the merits, before the Secretary and NRC have invested substantial amounts of time and energy into licensing proceedings and other activities connected with the site. It is not, however, the Committee's intention that Congressional consideration be a substitute for the NRC's health and safety considerations under section 202 of the Energy Reorganization Act. The action by Congress will focus on an evaluation of the State's reasons for its opposition to the site, and will not in any way preempt the NRC's authority.

Section 105(d) provides that the State Review Boards be 90 percent funded with Federal monies, but only to the extent such expenses are not otherwise incurred by any State or local government. Thus, if an employee of the State was appointed to serve on the Board, his salary would not be paid by the Federal Government.

The funding will cease at the end of the first year after the effective date of the operating license for the repository, except that funds will remain available for obligations incurred by the Board before the end of the one year period. Funds will not cease if there

is another site in the State which has been recommended as a repository site.

Section 105(c) provides a procedure for a State Review Board to petition Congress or an appropriate Federal agency for financial or technical assistance to mitigate the adverse impacts which will likely result from the location of a repository in the State. If submitted to an agency, it will be forwarded to Congress for consideration and action. Subsection (g) directs the Secretary to conduct a study to determine the feasibility of imposing fees on the users of the repositories to be used to mitigate adverse impacts on the State.

Participation of Indian Tribes

Section 106 provides for the participation of Indian tribes in decisionmaking regarding site selection and development activities. The authorities and the assistance granted to the governing body of an affected Indian tribe are parallel to those of a State Review Board. The provisions in section 106 afford participation of the affected Indian tribe when a site recommended by the Secretary of Energy under section 103 is located in Indian country.

The participation of an affected Indian tribe in activities proposed to be located on Indian land is consistent with existing law. The established law recognizes Indian tribes as semi-sovereign entities, based upon the historical concept of conquest and the realities of cultural diversity existing during this country's formative years. Drawing from Article 1, section 8, clause 3 of the U.S. Constitution granting to the Congress the power to regulate commerce with the Indians, the United States Supreme Court held that land reserved to a particular Indian tribe by the federal government gives the tribe and its members a possessory interest in those lands, which cannot be alienated without the consent of the Federal government. *Johnson* v. *McIntosh*, 21 U.S.C. 543 (1823). This restriction on alienation exists to the present and applies to land reserved to Indians through treaties, executive orders, and Congressional Acts. 25 U.S.C. §462. Thus the Federal Government acts as a trustee of these lands, the particular Indian or tribe owning a beneficial interest therein. 25 U.S.C. §463f.

A corollary to the trust relationship between Indians and the federal government is a denial of the power to regulate the Indians to the States. The Supreme Court stated:

> The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union.

Worcester v. *Georgia*, 31 U.S. 515 (1832). As a result, a state is severely limited in its power to tax, to impose criminal penalties, and to otherwise regulate the activities of Indians in Indian country. *See DeCoteau* v. *District County Court*, 420 U.S. 425 (1975), *Williams* v. *Lee*, 358 U.S. 217 (1959).

The Indian Reorganization Act of 1934, 25 U.S.C. §461 et seq., recognized the right of Indians to govern themselves and set up procedures for each of the various tribes to form its own governing body, adopt a constitution, and to incorporate itself. The tribe

became recognized by the Federal Government for the purpose of governing itself when its constitution was approved by the Secretary of the Interior.

One effect of such recognition is the necessity of gaining tribal consent before the Secretary of the Interior can alienate or otherwise encumber Indian land. 25 U.S.C. §476. Subsequent legislation extended these tribal rights to other Indian communities, and extended the federal trust relationship to lands previously allotted to individual Indians.

Sections 105 and 106 reflect current law by recognizing the right of each Indian tribe to regulate activities within the exterior boundaries of its reservation, and the absence of that right to the State in which an Indian reservation is located. The term Indian reservation is defined in the bill (section 102(13)) to include dependent Indian communities, reservations, and allotments, as defined in 18 U.S.C. §1151. The term Indian tribe includes all groups of Indians recognized by the Secretary of the Interior under the Indian Reorganization Act and other laws.

Application of NEPA

Section 103(a)(4) states that the initial selection of a site for a potential repository is not a major Federal action under the National Environmental Policy Act, 42 U.S.C. §4321 et seq. Section 103(b) exempts the drafting of preliminary guidelines for site selection from the requirement of an EIS. It is not the intention of the Committee to exempt from NEPA requirements any of the other actions taken by the Secretary or the NRC under the bill; the exemption applies only to the two preliminary actions noted above. The site characterization activities, promulgation of standards and requirements, and all other actions taken pursuant to this bill are intended by the Committee to be subject to the application of NEPA, according to existing law.

Interim Spent Fuel Storage

The Committee deleted Subtitle C of Title II of the bill as introduced which provided for Federal provision of away-from-reactor (AFR) centralized storage facilities for emergencies related to foreign or domestic spent nuclear fuel. Foreign fuel from U.S. sources may be required to be returned here to prevent diversion of the material for use in manufacture of nuclear weapons. Return of U.S. fuel from foreign countries is required if diversion is threatened by the Nuclear Non-Proliferation Act. And there has been a threatened deficit of storage capacity at reactor sites for domestic spent fuel. The subtitle would have established a limited Federal program to provide an increment of storage capacity suitable to take care of non-proliferation needs, and in addition whatever amount of capacity could be demonstrated to be necessary to provide interim storage for domestic utilities which could show that no alternative facilities could be available for the spent fuel. Under the proposal, no spent fuel could be received for Federal storage services if withdrawn from a reactor core after 1990. The duration of the program—from enactment to 1990—was anticipated to provide utilities with a clear planning base by meeting any emergency

short-term requirements, while indicating a date certain by which utility-financed on-site or centralized storage facilities must be available.

The use of on-site, utility-financed interim storage is generally the system preferred by the Committee. Concern was expressed during consideration of the subtitle that estimates of the quantity of off-site capacity needed have not been reliable. Individual utilities have been increasing on-site capacity steadily since 1978, reducing demand for centralized storage. Substantial support has continued to exist, however, for some Federal capacity to back up on-site storage and meet non-proliferation needs.

The Committee decided to delete the subtitle essentially because it was determined that adequate time did not exist to complete a thorough debate on the interim storage issues. The Committee's first priority was to report legislation addressing permanent storage programs. In deferring the AFR debate, the Committee has noted for the third year since the President first made his "Spent Fuel Offer" in 1977 for Federal takeover of the interim storage system, that this is a controversial issue which should be decided with certainty by the Congress. Utilities require a planning basis for decisions relating to construction of non-Federal storage capacity.

Nuclear Safety Board

Title IV establishes a Nuclear Safety Board (NSB) as an independent board to investigate events at nuclear facilities which might be the precursors of accidents, to analyze operational data, and to make recommendations to the Nuclear Regulatory Commission for regulatory improvements.

The idea of a Nuclear Safety Board was independent by and cooperatively investigated by Representative Edwards and Chairman Udall. On November 1, 1979 Representative Edwards introduced H.R. 5775 to establish a Nuclear Safety Board. Chairman Udall subsequently reintroduced H.R. 5775 as Title IV of H.R. 6390.

The theory underlying a Nuclear Safety Board is that accidents such as the one at Three Mile Island may well be preceded by one or more incidents which, if identified and analyzed, could provide the basis for preventive measures. Three Mile Island was preceded by several incidents which indicated the existence of design and procedural flaws requiring corrective actions. Had the significance of these incidents been appreciated and appropriate corrective measures taken, it is likely that the Three Mile Island accident would not have occurred.

The idea of establishing a nuclear safety board was first suggested by Professor Harold Lewis, who served as chairman of the Nuclear Regulatory Commission's Risk Assessment Review Group and who is a member of the President's Nuclear Safety Oversight Committee. In a letter of November 23, 1977 to Chairman Udall, Professor Lewis said:

> For some years I have been concerned about safety assurance for nuclear reactors, and have been bothered by the fact that so much of the public attention has been focused upon risk assessment, to the detriment of the former
> * * *

> There are many analogies between the problem of reactor safety and that of aviation safety. Each deals with a highly complex mechanism, with potential for mechanical, electrical, and human failure, and with the safety of each predicated upon a "defense in depth". In the aviation case, the analysis of real accidents normally reveals a chain of events coupled with operator error, ultimately leading to an accident, although the record sometimes includes unique events * * *. The analogy I see is that these two technologies each involve extremely complex systems, the analysis of whose behavior, especially under upset conditions, strains our capability to or perhaps past the limit.
>
> How then do we assure, and continue to improve, aviation safety? We recognize that designs are not perfect, that inspection is not perfect, that pilots are not perfect, and that accidents themselves can form a statistical base for safety assurance. In particular (and this is a feature shared with reactors), we exploit the fact that any serious accident must have some less serious precursors, and that the precursors themselves provide statistical keys to the weaknesses in the system.
>
> The problem is to learn enough from small accidents to make the corrections necessary for the prevention of large ones. Historically, this has been a successful approach, and public acceptance of aviation attests to that fact * * *.

In response to Professor Lewis' suggestion Chairman Udall requested the NRC and its Advisory Committee on Reactor Safeguards to assess the merits of the Lewis proposal. As part of this assessment, the ACRS undertook an inquiry into nuclear powerplant incident reports (called Licensee Event Reports (LERs)) received during the period 1976–1978. This inquiry, which was reported upon in NUREG 0572, concluded that LERs were a source of valuable data and information, and that a systematic procedure should be developed in order to make better use of this information. This study and the Three Mile Island accident, which together showed the need for analysis and evaluation of reactor operating data, were major factors underlying the Commission's decision to establish an Office of Analysis and Evaluation of Operational Data (OEAOD).

In the course of its deliberations, the Interior Committee Subcommittee on Energy and the Environment considered whether the Nuclear Safety Board should be an independent agency such as the National Transportation Safety Board, an independent agency which investigates aviation and other transportation accidents and incidents, conducts special studies, and makes recommendations to the Secretary of Transportation regarding transportation safety. The Department of Transportation is required to respond within 90 days to every NTSB recommendation by either adopting it, initiating procedures to adopt it, or refusing to adopt it in whole or in part. The NTSB's recommendations are adopted in the great majority of instances, and the agency has an excellent reputation for enhancing aviation and other kinds of transportation safety.

The Subcommittee also considered, as an alternative to an independent agency, the possibility of giving the OAEOD a statutory existence and incorporating the board into it. But the Subcommit-

tee concluded that the advantages of an independent agency outweighed those of a statutory group within the Nuclear Regulatory Commission. When the Nuclear Regulatory Commission analyzes reactor malfunctions, the adequacy of its own previous actions is often at issue. The fact of an agency being in the position of reviewing its own work creates, at a minimum, the appearance of a conflict of interest. Moreover, the public recommendations of an independent agency would probably carry more weight and have greater credibility than the recommendations of an internal office where considerations of office perogatives might influence decisions as to whether recommendations should be acted upon.

The bill providing for a Nuclear Safety Board was drafted to take account of differences between nuclear and transportation safety. The Nuclear Safety Board would focus upon significant events (not only accidents in which damage occurs) and upon analyzing the implications of these events.

The Subcommittee narrowed the functions of the NSB as originally proposed eliminating those of general oversight over the Nuclear Regulatory Commission and of monitoring the NRC's resolution of safety issues.

The NSB was given the duty to investigate significant events, study operational data and make recommendations to the NRC. These recommendations are not legally binding, although the NRC must respond to them within 90 days. The NSB was also given the authority to conduct special studies and to evaluate suggestions concerning ways to improve nuclear safety. The original NSB proposal was also modified to assign the NSB respoonsibility to collect and analyze data from operating reactors on an instantaneous or otherwise timely basis in order to determine whether a potentially dangerous situation exists and to make recommendations to reactor operators pertaining to such a situation.

The Subcommittee clarified the NSB's relationship with the NRC. The NSB would conduct an independent investigation of significant events or—if it so chose—ask but not order the NRC to perform an investigation and report its findings to the NSB. Thus, the Nuclear Safety Board would take responsibility for seeing that all significant events were investigated, while avoiding any unnecessary duplication between its activities and those of the NRC. While the NSB would concentrate on powerplant safety, it is authorized to investigate safety problems occurring at any facility or involving materials licensed or otherwise regulated by the Nuclear Regulatory Commission.

The Subcommittee placed a limit of 50 on the number of employees and a limit of 12 on the number of full time consultant equivalents that the board could hire. No technical qualifications were specified for board members. The experience of the NTSB has been that it is desirable to have a board whose members have quite varied backgrounds and perspectives, and that the necessary expertise is assured by the technical qualifications of its staff. Appropriations of $2.6 million are authorized for each of the fiscal years 1981 and 1982.

Inflationary Impact Statement

In accordance with rule XI, clause 2(1)(4) of the Rules of the House of Representatives, this legislation is assessed to have a minimal inflationary effect on prices and costs in the operation of the national economy.

Impacts of the national nuclear waste management program which would be enacted by this legislation will be distributed among a great diversity of regions and types of business institutions, and is not likely to particularly affect any single segment of the economy. Resolution of the permanent nuclear waste disposal problem should provide certainty and stability for waste disposal charges levied on electricity consumption.

The establishment of a Nuclear Safety Board will not adversely affect the national economy as the Board is limited to three members and a support staff of not more than fifty; without Congressional action the Board itself will cease to function five years after enactment of this legislation. The Board will be performing functions previously handled by the NRC, including investigation of major accidents and small events at nuclear facilities, hopefully alleviating the necessity of convening an outside panel to investigate events at nuclear facilities.

Congressional Cost Estimate

In accordance with Rule XIII, Clause 7(a) of the Rules of the House of Representatives, the Committee has made an estimate of the budget authority which would be required to carry out the provisions of H.R. 6390.

The Committee is in accord with estimates made by the Congressional Budget Office regarding the programs authorized in the bill. It should be clarified, however, that, regarding assistance to States for development of low-level waste disposal sites, the Federal government will not bear the full costs of those activities. Under the legislation, states are encouraged to seek assistance grants from the Secretary of Energy. The Secretary and the Congress will determine appropriate authorization and appropriation levels to help States with planning and siting activities. The Federal cost of low-level waste assistance programs will be far lower than that estimated by the Congressional Budget Office due to this restraint on the Federal share of those activities.

Costs for development of high-level waste facilities are required under H.R. 6390 to be recovered from users of the facilities. The Department of Defense will be one such user of permanent repositories. The remainder of repository costs will be paid by private entities which also use the facilities.

The analysis of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 23, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6390, the Atomic Energy Act Amendments of 1980, as ordered reported by the House Committee on Interior and Insular Affairs, September 16, 1980.

Title I establishes procedures for the selection and approval of a federally owned high-level nuclear waste repository. Specifically, the bill directs the Department of Energy (DOE) to prepare site selection criteria by February 1981, to identify four possible repository sites by 1985, and to select a site for development by 1988. The bill authorizes state review boards to be established in those states where the initial four sites are identified and to receive federal technical and financial assistance. DOE is directed to collect a waste disposal fee to cover all directly related costs for the development, construction, and operation of a waste repository. The use of such funds will be subject to annual authorization and appropriations action. In addition, the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) are required to develop regulations regarding high-level nuclear waste repository licensing.

Title I also expands NRC responsibilities for the disposal of low-level radioactive waste. The Commission must determine if all applicable NRC requirements have been met before operations at a licensed disposal site can be terminated. The bill requires, upon license termination, the transfer of burial sites without cost to state or federal government control, unless the NRC determines lthat the transfer is not necessary to protect public health and safety. In any case, the bill provides for NRC oversight of long-term maintenance activities. The bill authorizes the NRC to provide technical assistance to states and the Department of Energy to provide funds to states which have entered compacts for developing waste facilities.

Title II establishes the Nuclear Safety Board to conduct independent investigations of events at nuclear facilities and to review NRC licensing practices. It authorizes the appropriation of $2.6 million for each of fiscal years 1981 and 1982 and requires the termination of the Board six years after the date of enactment of the bill.

The largest potential costs associated with this bill are for construction of a permanent repository and site characterization studies for high-level nuclear waste. Costs for a permanent repository are highly uncertain pending the selection of a site and storage method. Preliminary estimates for a full-scale facility, however, suggest that design and construction costs will be over $900 million in 1980 dollars. Assuming construction begins in 1990 and takes over six years to complete, total costs would be over $2.5 billion by 1996. No significant expenditures for design and construction are expected prior to 1985. While the bill directs DOE to collect a waste disposal fee from users, no receipts are expected before 1985. De-

partment plans regarding this fee are not expected to be developed until more is known about the configuration of the selected site and storage method.

Site characterization costs by 1985 could also be significant. Depending on how extensive exploratory drilling and testing activities are and the nature of the sites selected, characterizations could cost up to $125 million per site, or a total of up to $500 million.

The bill does not authorize the appropriation of funds for administrative costs associated with high-level waste activities. Existing and planned efforts by DOE, EPA, and NRC are apparently in accordance with the intent of this legislation, and no additional funds are expected to be sought for fiscal year 1981. The cost to provide assistance to the state review boards is projected to total $3 to $6 million after 1985.

Preliminary information from NRC and DOE suggests that the annual cost for long-term routine maintenance of a low-level waste disposal site, barring extraordinary events, is approximately $200,000 in 1980 dollars. Of the six existing sites, it is estimated that five will revert to federal control. If five of the sites are turned over to the federal government by 1986, the annual costs of managing them would total about $1.5 million at that time. In addition, NRC staff support to carry out the new tasks mandated by the bill is expected to cost $1.5 million between 1981 and 1985.

The bill also allows DOE, subject to appropriation action, to provide funds to states that have entered into compacts for the development of low-level waste facilities. The total cost for planning and constructing a regional site with an annual waste volume of 1.2 million cubic feet is expected to be approximately $13 million over a 3 to 5 year period, assuming construction begins in 1983. Annual operating costs for each site would total about $9 million in 1986, with increasing costs in subsequent years. Assuming development of up to four such sites, planning and construction costs could total $52 million, with annual operating costs of $36 million per year, beginning in 1986 or later. However, the bill does not specify how much of these costs could be covered by federal grants, nor has DOE developed plans in this regard. In any event, because of the time required to negotiate compacts, requests for state planning grants are not likely to be substantial in fiscal year 1981. DOE administrative expenses for this state assistance program are estimated to total $1.5 million between 1981 and 1985.

Title II authorizes the appropriation of $2.6 million for each of the fiscal years 1981 and 1982. Assuming appropriation of the authorized amounts, it is estimated that outlays for the Board will be $1.5 million in fiscal year 1981, $2.6 million in 1982, and $1.1 million in 1983. All costs of this bill fall within budget function 270.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ROBERT D. REISCHAUER
(for Alice M. Rivlin, Director).

Oversight Statement

In accordance with its responsibilities under the rules of the House, the Committee has conducted hearings on issues related to H.R. 6390 and on the bill itself. As programs authorized by H.R. 6390 are implemented, the Committee will continue to exercise careful review of the activities to assure compliance with the legislation and Congressional intent. No recommendations were transmitted to the Committee pursuant to Rule X, clause 2(b)(2).

Section-by-Section Analysis of H.R. 6390

(As ordered reported by the Committee on Interior and Insular Affairs)

Title I—Amendments Related Primarily to Radioactive Waste

SUBTITLE A—HIGH LEVEL WASTE REPOSITORIES

Section 101 sets out findings and purposes for the Title.

Section 102 sets out definitions for the Title.

Section 103(a) directs the Secretary of Energy to select four sites for possible development as licensed high-level waste repositories by December 31, 1985. This selection is declared not to be a major Federal action under the National Environmental Policy Act. The Secretary is directed to continue looking for additional sites after this initial selection.

Section 103(b) requires the Secretary to develop criteria for selecting sites for consideration for repositories.

Section 103(c) requires the Secretary to comply with procedures set out by the Nuclear Regulatory Commission for characterization (studying and testing) of repository sites. Section 103(c)(3) limits the amount of high-level waste which can be used in site characterization activities, and requires that any such waste be removed from sites which are not licensed for operation.

Section 103(d) requires the Secretary to select, not later than March 30, 1988, a site from among those characterized to be recommended for application for licensing for construction and commercial operation as a permanent waste disposal facility. The Secretary is required to provide a report to the President explaining this recommendation. If the site so recommended is disapproved under other sections of this Act, the Secretary is required to provide a report to the President explaining this recommendation. If the site so recommended is disapproved under other sections of this Act, the Secretary is required to propose a new site for license application.

Section 104 sets deadlines for agency actions concerning licensing and regulation of high-level waste repositories.

Section 104(a)(1) requires the Nuclear Regulatory Commission to promulgate standards and requirements for licensing for high-level waste repositories no later than June 30, 1981.

Section 104(a)(2) requires the Administration of the EPA to promulgate general standards for repository licensing by January 31, 1981.

Section 104(b) requires the Commission to report to the Congress on the status of the application for repository licensing submitted under Sec. 102 not later than 2 years after the application is received by the Commission.

Section 104(c) requires the Commission to make a final decision on the license application submitted under Sec. 202 not later than 4 years after the application is received by the Commission.

Section 105 provides criteria for participation in repository development and impact assistance for States affected by repository development.

Section 105(a) provides criteria for constitution by States of State Review Boards which would be eligible for authorities and benefits under the Act. Such Boards could be constitute as detemined by the State under State law, except that the general public, affected Indian Tribes and affected local governments must be represented, and the Board must hold meetings open to the public at least once every two months. A State Review Board would have authority to represent the State in participating in waste repository development planning, petitioning Congress to block development of waste repositories, and developing requests for impact assistance.

Section 105(b) provides that a State Review board may, by a majority vote of its members, petition the Congress seeking disapproval of the selection of a site within the State for application for licensing for permanent waste disposal facilities.

Section 105(c) provides that a Board may request financial, technical or legislative assistance to mitigate impacts of waste repository development.

Section 105(d) directs the Secretary to provide funds for the operations of State Review Boards, except that at least 10 percent of the costs of the Board must be provided by the State. Funding for a Board is teminated one year after a repository commences commercial operation in the pertinent State.

Section 105(e) recognizes that a Board may participate in proceedings relating to licensing of a waste repository.

Section 105(f) requires Federal agencies to provide complete and timely information to State Review Boards, and requires the Secretary to enter into cooperative agreements with States to further cooperation.

Section 105(g) directs the Secretary to conduct a study regarding collection of fees from nuclear utilities to be made available to communities affected by waste repository development.

Section 106 provides that Indian tribal governments have the same authorities as State Review Boards and are eligible for the same assistance, except that the Federal government would pay 100 percent of the costs of the pertinent activities.

Section 107 provides for approval or disapproval of repository sites by affected States, the President and the Congress.

Section 107(a) provides for Congressional disapproval of sites selected for characterization for possible use as repositories through passage of a concurrent resolution.

Section 107(b) provides that the President may approve a repository site for license application, thereby rendering that site eligible for expedited procedures under the Act, unless a State Review Board or Indian Tribal Government submits a petition of disapproval to the Congress. The President may also either delay a deci-

sion on the site nomination, or disapprove a nominated site. (If the President were to disapprove a site, the Secretary would be required under Sec. 102(d) to propose another site for approval within one year.)

Section 107(c) provides for Congressional disapproval of nomination of a repository site for license application. The Congress may disapprove the nomination if either House approves a resolution affirming the petition of a State. Such a resolution is provided expedited rules as a highly privileged motion.

Section 108 provides expedited judicial review of any agency actions relating to construction and permitting of high-level waste repositories under the Act. The section does not limit the scope of challenges be brought within 60 days of the action complained. Claims must be filed in the U.S. Court of Appeals in the District of Columbia, which has exclusive jurisdiction in the proceeding, and which is required to expedite consideration of any such claims.

Section 109 provides for expedited permitting of repositories developed under the Act, except that permits issued by the Commission are not affected by the Section.

Section 109(a) requires Federal officers or agencies to grant permits affecting characterization or development of waste repository sites under the Act as soon as practicable, to the extent permitted by applicable law. (No officer or agency is required to issue a grant or permit which would be in violation of applicable law.) The Nuclear Regulatory Commission is exempted from the section.

Section 109(b) provides that any permits or other authorizations issued or granted under section 108(a) shall include terms and conditions permitted by law. Permits or authorizations issued or granted under Section 108(a) may subsequently be amended by the relevant officer or agency, except that if an amendment is only permitted and not required by law, and if the change would have the effect of terminating activities at a site provided for under the Act, the officer or agency is prohibited from making such changes.

Section 110 requires the Secretary to collect fees covering all costs of waste disposal and management from users of Federal waste repositories. Such fees are required to be used directly to offset waste management program costs, but expenditure of the funds by the Secretary are subject to annual authorizations and appropriations by Congress.

Section 111 sets dates at which parts of the subtitle will cease to have effect.

Section 111(a) provides that sections 107 and 108, which provide expedited permitting and judicial review for high-level waste repository development, will terminate as soon as at least one licensed repository is in commercial operation.

Section 111(b) provides that all the provisions of the title except for sections 107 and 108, which are addressed in section 209(a), will terminate December 31, 1999.

Section 112 requires the Secretary to design and construct facilities for permanent disposal of high-level waste in a manner which provides that for an appropriate period of time the wastes placed in such facility will be retrievable for reasons of safety or for recovery of the waste for economic purposes. The Secretary is prohibited from disposing of spent fuel in an irretrievable manner unless expressly authorized to do so by the President.

SUBTITLE B—LOW-LEVEL WASTE

Section 121 (a) defines a low level waste as those classes of nuclear materials which the Commission determines should be disposed of according to the standards and procedures set out in these amendments.

Section 121(b) requires that, where a State licenses low level waste burial under an agreement with the Nuclear Regulatory Commission, the State must:

(1) provide that disposal sites be left under State or Federal care after the site is no longer operating,

(2) regulate the disposal in a manner at least equivalent to standards and requirements imposed by the Commission, and

(3) provide for public participation in licensing proceedings and rulemakings and for an independent review by the state of the environmental impacts of the licensed activity. No state is required to conduct any such proceedings which would duplicate proceedings conducted by the Commission.

Authority is reserved for the Commission to determine, before a state-issued license is terminated, that applicable standards and requirements under the license have been met by the licensee.

The Commission is authorized to provide technical assistance to States to aid them in low level waste management activities.

Section 121(c)(1) and (2) provide a title and table of contents reference for low level waste management amendments to the Atomic Energy Act.

Section 121(c)(3) and (4) require that all licenses issued for low level waste disposal include conditions necessary to assure that, prior to termination of the license, the licensee will comply with requirements which assure the site will be properly decommissioned and turned over for permanent custody to the Federal government or the State in which the site is located.

Section 121(c)(5) is a technical amendment.

Section 121(c)(6) provides that in the case of licenses for low level waste disposal which were in effect at the time of enactment of these amendments, requirements that sites be transferred to State or Federal ownership are applicable, but the Commission may take into consideration land title issues which may make such transfers infeasible. The section also clarifies that provisions allowing the Commission to permit the use of the subsurface of disposal sites for other purposes after license termination do not apply to low level waste sites.

Section 121(c)(7) is a technical change.

Section 121(c)(B) is a conforming amendment.

Section 121(c)(8) provides that the Commission may by order permit the use of the surface estate of low level waste disposal sites which have been transferred to the Federal or State government for permanent custody, if the Commission determines such use would not endanger public health or safety or the environment.

Section 121(c)(9) provides that the Commission may determine that permanent Federal or State custody of low level waste burial sites is not required if such transfer is not necessary to protect public health and safety, except that in any case the site and low level waste materials would be required to be maintained under Commission license permanently.

Section 121(c)(10) requires states to assume custody and to care for any low level waste disposal sites if such sites are transferred to them after termination of operation licenses.

Section 121(c)(11) provides for the Commission to require that ownership of land on which low level waste is disposed be transferred to the Federal government or, at the option of the state, to the state in which it is located, upon termination of license for such disposal. The Commission is required in determining transfer requirements to take into consideration the status of ownership of the land and the ability of the licensee to transfer title to it.

Section 121(c)(12) is a technical change.

Section 121(c)(13) is a technical change.

Section 121(c)(14)(A) requires that transfer of disposal sites by licensees to Federal or state care be conducted without cost to the state or the United States except for necessary legal or administrative costs.

Section 121(c)(14)(B) makes clear that provisions allowing transfer of title to disposal sites by the state or the U.S. to another party, which are applicable to uranium mill tailings sites, are not applicable to low level waste sites.

Section 121(c)(14) (the existence of two sections 211(c)(14) is a technical error in the bill):

(1) Amends section 83a. (2) of the Atomic Energy Act to require that the Commission assure, when issuing new licenses for low level waste disposal, that the licenses contain terms for the transfer of the site to state or U.S. ownership upon license termination;

(2) Amends section 83b. (1)(A) of such Act to provide that the Commission shall require that low level waste disposal sites be transferred to State or U.S. ownership prior to termination of the license for the site, and that whatever Federal agency or State receives custody of the site will require a license from the Commission for such custody.

(3) Amends subsection 83b(6) of such Act to clarify that transfer of title to disposal sites does not relieve any licensee of liability for fraudulent or negligent acts done prior to such transfer, and

(4) Amends section 83b(8) of such Act to exempt sites on Indian tribal land from the requirements for transfer of title, and to provide that upon license termination for such sites the licensee shall enter into arrangements with the Commission to assure that long-term care will be provided for such sites.

Section 121(15) prohibits the Commission from terminating any license for low level waste disposal until it has made a determination that the licensee has complied with land transfer, decommissioning and site closure requirements.

Section 121(d)(1) and (2) are conforming changes in titles.

Section 121(d)(3) requires that the Commission regulate low level waste in a manner which protects public health and safety, and conforms to requirements of the Solid Waste Disposal Act. In consultation with the Administrator, the Commission may provide for and promulgate regulations for the disposal of low level nuclear waste within or adjacent to chemical or other hazardous waste disposal sites or in sites classified as sanitary landfills.

Section 121(d)(4) gives the Commission authority to require any person, official or agency exempted from licensing by section 81 of the Act to carry out rules or orders to comply with low level waste management standards. (This would pertain to the Department of Energy, which may operate burial grounds or take custody of sites after license termination.)

The section also provides a civil penalty for violations of low level waste requirements, referencing section 234 of the Act. The maximum fine under section 234 is $5,000 for each day of violation, per violation, but not more than $25,000 in a 30-day period.

Section 121(e)(1) authorizes the Commission to require licensees to provide bonds, surety or other financial arrangements prior to termination of licenses to ensure that sites will be properly cleaned up and that regulatory requirements will be met.

Section 121(e)(2) authorizes the Commission to require a licensee to provide bonding, surety or other financial arrangements to pay for long-term maintenance or monitoring of the site after license termination if the Commission determines that such maintenance will be necessary.

Section 121(e)(3) requires the Commission to take into account, when it determines the need for financial arrangements from licensees, sureties or arrangements the licensee may have provided to other Federal agencies or state or local agencies for similar purposes. The Commission is allowed discretion to determine that such other arrangements are not adequate to carry out requirements.

Section 122 amends the Atomic Energy Act to add a new section 85 to Chapter 8 of the Act. This section sets out new state authorities and responsibilities related to providing for low level waste burial facilities.

Section 85.a. prohibits the issuance or renewal of any license or permit by the Commission for interstate transportation of nuclear material in any state five years after the enactment of this section, unless a state has entered into an agreement with a state in which the material will be disposed for management of the material.

Section 85.b. authorizes states to enter into compacts or agreements with other states in order to establish facilities for low level waste disposal. (This section would remove a prohibition against a group of states making agreements that would affect trade which results from interpretation of the Interstate Commerce clause of the Constitution.)

Section 122(b) is a conforming amendment.

Section 123 authorizes the Secretary of Energy to provide grants and technical assistance for the development of low level waste burial grounds to states which have entered into agreements with other states to provide low level waste burial capacity.

Title II—Nuclear Safety Board

Section. 201 sets out findings and purposes for the title.

Section. 202 establishes a Nuclear Safety Board as an independent agency in the executive branch, and provides criteria for Board membership and salaries.

Section. 202(a) establishes the Board and provides that the Board have a judicially recognized seal.

Section. 202(b) requires that the Board be composed of three members, appointed by the President and confirmed by the Senate. No more than two members are permitted to be of the same political party. The President is required to submit recommendations for the first three members no later than 90 days after enactment of this Act.

Section. 202(c) provides for designation of a Board Chairman and Vice Chairman and their duties. These positions are required to be designated by the President. Their terms are set at two years, to run concurrently.

The duties of the Chairman are those of chief executive officer. Subject to Board policies, the Chairman is responsible for staffing, administration and budget. The Chairman is permitted to delegate these functions to any other Board member or any appropriate agent of the Board.

The Vice Chairman's duty is to act as Chairman in the absence of the Chairman.

Section. 202(d) sets terms for Board members. Members serve for six years, and may be reappointed, except that the initial appointees serve for two years, four years and six years, respectively, so that subsequent terms will be staggered to ensure continuity.

Members appointed to fill a vacancy occurring before the scheduled expiration of a term serve only for the remainder of the original term.

Any member may be removed by the President for inefficiency, neglect of duty or malfeasance.

Section. 202(e) provides that two members of the Board constitute a quorum, but that a lesser number may hold hearings.

Section. 202(f) sets salary levels for the Board. The Chairman's level is equivalent to Executive Level III, and other members' pay is equivalent to Executive Level IV. Members are paid by the day engaged directly in Board activities, including travel time.

Members also receive travel and per diem expenses while working for the Board away from their homes or regular places of business.

Section. 203(a) provides for staff and support services for the Board.

Subject to rules prescribed by the Board, the Chairman is responsible for appointing staff and fixing their salaries. Staff hiring and compensation are subject to Civil Service procedures and classifications.

Section. 203(b) allows the Chairman, subject to Board rules, to hire specialists or consultants outside Civil Service procedures for periods of no more than one year, and at pay levels not to exceed the daily equivalent of the maximum salary for a GS–18 level.

Section. 203(c) allows the Nuclear Regulatory Commission to provide, upon request of the Board, personnel, facilities, equipment or other support services. The General Services Administration is required to provide support services requested by the Board. Any such assistance by the other agencies is required to be on a reimbursable basis.

Section. 203(d) permits the Board to confer with State or local agencies and to make use of services or facilities of such agencies on a reimbursable basis.

Section. 203(e) allows the Board the same mailing privileges as other U.S. agencies.

Section. 203(f) allows the Board to accept voluntary services and any gifts or donations.

Section. 204 sets forth the duties of the Board:

The Board is mandated to investigate and analyze both major accidents and small events involving nuclear facilities and/or materials to determine the causes of these occurrences and to make recommendations for improvements in nuclear regulations as a result of these studies.

Section. 204(1) requires the Board to investigate significant events involving facilities and/or materials regulated by the Commission to determine their implications for health and safety and whether there may be implications for improvements in regulations. The Board may request the Commission to conduct an investigation, then analyze the Commission's data in order to make independent conclusions and recommendations.

Section 204(2) requires the Board to regularly analyze operational data gathered by the Commission to determine whether there may be patterns of events occurring which could have health and safety significance.

Section 203(3) requires the Board to conduct special studies pertaining to safety at facilities or activities regulated by the Commission. (This might include study of generic safety issues or other studies which may be necessary to support using the results of operational data analysis to make recommendations.)

Section 204(4) requires the Board to receive and evaluate suggestions received from outside groups (industry groups, public interest groups or scientific groups, for example) to determine whether they may include information or suggestions to improve nuclear regulation.

Section 204(5) requires the Board to make recommendations to the Commission regarding specific measures (including new or revised standards or requirements) which should be adopted by the Commission to improve nuclear safety.

Section 204(6) requires the Board to establish a monitoring center for the purpose of receiving reactor data on a instantaneous or otherwise timely basis from nuclear power reactors. The monitoring staff would be responsible for analyzing data to determine whether a potentially dangerous condition exist and making appropriate recommendations to operators of nuclear powerplants when it is determined that such a situation does exist.

Section 204(7) requires the Board to issue periodic reports containing recommendations of specific measures to increase the safety of nuclear facilities and/or activities involving handling of nuclear materials.

Section 205 sets out specific powers of the Board:

Section 205(a) permits the Board to hold hearings as it determines necessary, and to administer oaths or affirmations to witnesses appearing before it. The subsection requires that witnesses be paid the same fees and mileage as are paid to witnesses in U.S. courts.

Section 205(b) authorizes the Board to issue subpenas for requiring attendance, testimony and production of evidence for matters relating to Board investigations. Subpenas are required to be

served in the manner provided for those issues by a U.S. district court under the Federal Rules of Civil Procedures.

Section 205(c) provides authority for any Board employee to enter and conduct investigations in any facility regulated by the Commission in which an event has occurred which the Board determines to have safety significance. Employees are authorized to inspect pertinent records.

Section 205(d) requires that the Board be furnished, upon request, autopsy reports by State or local officials on any person who dies as a result of having been involved in a nuclear accident.

Section 205(e) authorizes U.S. courts to issue, upon application by the Board, orders to compel compliance with Board subpenas or other orders under Board authorities. Failure to obey such orders by a court may be punished as contempt of the court.

Section 205(f)(1) provides that the Board has the authority of other U.S. agencies to compel testimony of witnesses despite witness' claim that to do so could constitute self-jeopardy, except that witnesses so claiming are granted automatic immunity from prosecution based on such testimony. The Board may use this authority with the approval of the U.S. Attorney General.

Section 205(f)(2) prohibits the use of any report issued by the Board as evidence in any court, or otherwise in any action for damages arising from the matter of the report. (The reference to the "Commission" in this paragraph should read "Board" and is a technical error in the bill.)

Section 206 sets out general administrative powers of the Board:

Section 206(a) provides authority for the Board to conduct inquiries and secure data from Federal, state or local agencies, or any person engaged in interstate commerce. Board requests for information are not subject to other agencies' right to withhold information relating to trade secrets, commercial information or other categories open to exemption under the Freedom of Information Act, but Board requests are subject to the limitations of the Privacy Act. The Board may require information in the form of written responses by these agencies or persons, which shall be made available to the public, subject to the limitations on trade secrets in section 407(a)(2).

Section 206(b) authorizes any member or agent of the Board (including employees and administrative law judges assigned to the Board) to take actions the Board may take under this subtitle.

Section 206(c) authorizes the Board to contract for services and studies. The Board is exempted from requirements applicable to other Federal agencies regarding advertising such contracts to provide opportunity for bidding.

Section 206(d) authorizes the Board to designate representatives for liaison with other bodies.

Section 206(e) authorizes the Board to create advisory committees under the Federal Advisory Committee Act. Such committees are limited to a lifetime of at most 2 years under that Act, and must be funded through a statutorily constituted agency.

Section 206(f) authorizes the Board to establish rules and regulations necessary to carry out its functions.

Section 207 regards public access to information collected or generated by the Board.

Section 207(a) requires the Board to make its information available to the public upon request, except that the Board is prohibited from releasing any trade secrets as defined in section 1905 of title 18, U.S. Code and is not required to release information subject to the Privacy Act.

Section 207(b) provides exceptions to section 407(a)'s prohibition on public release of trade secrets.

Section 208 requires the Board to concurrently submit to the Congress any budget issue, legislative recommendation or comment on legislation which it submits to the President or the Office of Management and Budget. Such information is protected against requirement of prior review by other U.S. officers or agencies.

Section 209(a) requires the Commission to respond in writing to Board recommendations not later than 90 days after receipt thereof. The Commission is required to indicate whether it intends to adopt the recommendations or, if not, reasons for its determination not to adopt any recommendations.

Section 209(b) requires publication of Board recommendations and Commission responses in the Federal Register.

Section 210 provides civil penalties for violation of Board reporting requirements. Civil penalties may be levied up to $5,000 for each violation, for each day of violation. The Board is required to provide hearings and notice regarding penalties. The Board is permitted to modify or remit civil penalties.

Section 211 provides procedures for judicial review under standard procedures of chapter 7 of title 5 of the U.S. Code.

Section 212 requires that the Board provide a yearly report to Congress regarding its activities.

Section 213 provides that the Board shall cease to exist six years after its creation.

Section 214 authorizes appropriations of $2,600,000 for fiscal years 1981 and 1982 to carry out the provisions of the subtitle.

Changes in Existing Law

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Atomic Energy Act of 1954, as amended

* * * * * * *

CHANGES MADE IN THE ATOMIC ENERGY ACT OF 1954 BY SECTION 121 OF H.R. 6390

CHAPTER 2. DEFINITIONS

Sec. 11. Definitions.

* * * * * * *

dd. The term "low-level radioactive waste" means waste containing source, byproduct, or special nuclear material which the Commission determines, by regulation, requires disposal in accordance with sections 83, 84, and 161 x. of this Act, except that such term does not include byproduct material as defined in section 11e.(2).

* * * * * * *

CHAPTER 19. MISCELLANEOUS

* * * * * * *

SEC. 274. COOPERATION WITH STATES.—

a. It is the purpose of this section—

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

(1) byproduct materials as defined in section 11 e. (1);

(2) byproduct materials as defined in section 11 e. (2);

(3) source materials;

(4) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

(1) the construction and operation of any production or utilization facility;

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11 e. (2) *and prior to termination of a license for disposal of low-level radioactive waste.* Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b. *The Commission may provide technical assistance to States for puroses of aiding the States in resolving problems relating to the disposal of radioactive wastes whether or not such wastes are composed of source, byproduct, or special nuclear material.*

* * * * * * *

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with [such material which] *material, waste, activities, and facilities regulated by the State pursuant to the agreement, which standards* are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including, *where applicable,* requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 83.84, and 275, [and]

[Note: Some of the amendments shown above in paragraph (2) were made in section 305(b)(c) of the bill]

(3) *for the licensing and regulations of byproduct material as defined in section 11 e. (2) and low-level radioactive waste,* procedures which—

(A) in the case of licenses, provide [procedures under State law which include] *under State law*—

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review:

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule:

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

(i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

(ii) an assessment of any impact on any waterway and ground water resulting from such activities;

(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including *site closure* decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11 e. (2); and

(D) prohibit any major construction activity [with respect to such material] *with respect to the material and waste to which this paragraph applies* prior to complying with the provisions of subparagraph (C)[.]; *and*

CHAPTER 8. BYPRODUCT MATERIAL

* * * * * * *

SEC. 83. OWNERSHIP AND CUSTODY OF CERTAIN BYPRODUCT MATERIAL, *LOW-LEVEL RADIOACTIVE WASTE,* AND DISPOSAL SITES.—

a. Any license issued or renewed after the effective date of this section under section 62 or section 81 for any activity which results in the production of any byproduct material, as defined in section 11 e. (2) *and any license issued or renewed after the date of the enactment of the Atomic Energy Act Amendments of 1980 for the disposal of low-level radioactive waste,* shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

(1) the licensee will comply with decontaimination, *site closure,* decommissioning, and reclamation standards prescribed

by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and *for sites at which such low-level radioactive waste is disposed of, and*

(2) ownership of any byproduct material, as defined in section 11 e. (2) *or any low-level radioactive waste,* which resulted from such licensed activity shall be transferred to (A) the United States or (B) [in] the State in which such activity occurred if such State exercises the option under subsection b. (1) to acquire land used for the disposal of byproduct material. [Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.] *Any license which is in effect on the effective date of this section (in the case of byproduct material as defined in section 11 e. (2)) or on the date of the enactment of the Atomic Energy Act Amendments of 1980 (in the case of a license for the disposal of low-level radioactive waste) and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination, except that in the case of any such license, the reference in paragraph (2) to the exercise by the State of an option under subsection b. (1) shall be treated as a reference to the exercise by the State of the option under subsection b (4).*

[(b) (1) (A)] *b. (1) (A)* The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section *(in the case of byproduct material, as defined in section 11 e. (2)) or after the date of the enactment of the Atomic Energy Act Amendments of 1980 (in the case of a license for the disposal of low-level radioactive waste)* title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11 e. (2) *or any low-level radioactive waste,* pursuant to such license shall be transferred to—

(i) the United States, or

(ii) the State in which such land is located, at the option of such State,

unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 181 of this Act in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, [of the land] *of land used for the disposal of byproduct material as defined in section 11 e. (2) which land is* transferred to the United States or to a State under subparagraph (A) *or under paragraph (4)* would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner

consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(C) If the Commission determines by order that use of the surface of land used for the disposal of low-level radioactive waste transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, may permit the use of the surface of the land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred the land with the right of first refusal with respect to such use of the land.

(2) If transfer to the United States of **[**title to such byproduct material and such land**]** *title to byproduct material, low-level waste, or land* is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c., assume title and **[**custody of such byproduct material and land transferred as provided in this subsection**]** *custody of the byproduct material, waste, and land so transferred.* Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

[(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.**]**

(3) If transfer to a State of title to any byproduct material, low-level waste, or land is required in accordance with this section, the State shall, following the Commission's determination of compliance under subsection c., assume title and custody to the material, waste, or land concerned. The State shall maintain the material, waste, and land so transferred in such manner as will protect the public health, safety, and the environment.

(4) In the case of any **[**such license under section 62**]** *license under section 62 or section 81 with respect to byproduct material as defined in section 11 e. (2),* which was in effect on the effective date of this section, *and in the case of any license for the disposal of low-level radioactive waste which was in effect on the date of the enactment of the Atomic Energy Act Amendments of 1980,* the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material, *or material which is low-level radioactive waste.* In exercising the authority of this paragraph, the Commission shall take into consideration the status

of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standard promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the [date of enactment of this Act] *date of the enactment of the Uranium Mill Tailings Control Act of 1978.*

(6) The transfer of title to land or byproduct materials, as defined in section 11 e. (2) *or any low-level radioactive waste,* to a State or the United States pursuant to this subsection *section* shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) [Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer)] *Material, low-level radioactive waste, and land transferred to the United States or to a State in accordance with this subsection and subsection a. shall be transferred without cost to the United States or to the State (other than administrative and legal costs incurred in carrying out such transfer).* [Subject to] *In the case of byproduct material as defined in section 11 e. (2) and land used for the disposal thereof, subject to* the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct materia' as defined in section 11 e. (2) *or any low-level radioactive waste* the licensee shall be required to enter into such arrangement with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

[c. Upon termination on any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.]

c. No license to which this section applies may be terminated until the Commission has made a determination that the licensee has complied with the requirements of subsection a. and any other applicable decommissioning and site closure requirements.

SEC. 84. AUTHORITIES OF COMMISSION RESPECTING CERTAIN BY-PRODUCT MATERIAL AND LOW-LEVEL RADIOACTIVE WASTE.—

a. The Commission shall insure that the management of any by-product material, as defined in section 11 e. (2), is carried out in such manner as—

(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the processing and with the possession and tranfer of such material.

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 275, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

b. (1) The Commission shall insure that the disposal of any low-level radioactive waste is carried out in such manner as the commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the possession and disposal of such waste.

(2) The Commission may provide for the disposal of low-level radioactive waste at sites which are located within or adjacent to sites at which hazardous waste is disposed of pursuant to the Solid Waste Disposal Act, or at sites classified as sanitary landfills under criteria promulgated under section 4004 that Act, where the Commission determines, in consultation and coordination with the Administrator of the Environmental Protection Agency, that the disposal of lowlevel radioactive waste at such sites is feasible and will not unduly endanger public health and safety or the environment.

(3) The Commission may, in consultation with the Administrator of the Environmental Protection Agency, promulgate rules and regulations designating concentrations or levels of activity for low-level radioactive waste which may be disposed of in hazardous waste disposal sites for which a permit has been issued under Subtitle C of the Solid Waste Disposal Act or in sites classified as sanitary landfills under criteria promulgated pursuant to section 4004 of the Solid Waste Disposal Act.

[b**]** *c.* In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of **[**such byproduct material**]** *material or waste to which this section applies*; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person **[**other than the United States or any officer or employee of the United States or a State**]** *(other than the United States or a State or any officer or employee of the United*

States or a State) of any rule, regulations, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as *provided in the case of* violations subject to a civil penalty under section 234. Nothing in this section affects any authority of the Commission under any other provision of this Act.

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CHAPTER 8. BYPRODUCT MATERIAL

Sec. 81. Domestic Distribution.
Sec. 82. Foreign Distribution of Byproduct Material.
Sec. 83. Ownership and custody of certain byproduct material, *low-level radioactive waste*, and disposal sites.
Sec. 84. Authorities of Commission respecting certain byproduct material *and low-level radioactive waste*.

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CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. * * *

* * * * * * *

x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure—

(1) that an adequate bond, surety, or other final arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2), *or for disposal of low-level radioactive waste*, by a licensee to permit the completion of all requirements established by the Commission for the decontamination, *site closure*, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, *or used in conjunction with the disposal of such low-level radioactive waste*, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; **[**and**]**

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material is defined in section 11 e. (2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring**[**.**]**; *and*

(C) in the case of each license for the disposal of low-level radioactive waste (whether in effect on the date of the enactment of this subparagraph or issued or renewed thereafter), if the Commission determines that any long-term maintenance or monitoring, or both, is necessary, the licensee, before termination of the license, will make available such bonding, surety, or other financial arrangements as may be necessary to assure the necessary long-term maintenance or monitoring, or both.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such *site closure* decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out [subparagraphs] *paragraphs* (1) and (2) of this subsection.

* * * * * * *

ADDITIONAL VIEWS

I support the Committee's decision to report H.R. 6390. As reported, the bill provides a useful vehicle for House consideration of important nuclear waste management legislation prior to the end of the 96th Congress. While the bill as reported does not speak to a number of significant nuclear policy issues that were addressed in H.R. 6390 as introduced, I regard the opportunity for the House to act this year on nuclear waste legislation to be an overarching priority. The remaining issues are set aside only temporarily, and without prejudice, and will be at the top of the Committee's nuclear agenda in the 97th Congress.

Among the measures which have been deferred are major provisions of H.R. 6390 which I believe, if enacted, would have had a substantial impact upon assuring that nuclear power plants were safely built and operated. The accident at Three Mile Island and the subsequent inquiries, which provided the impetus for H.R. 6390, demonstrated that the nuclear regulatory process had been overcome by complacency born of a belief that reactors were designed, built, and operated so conservatively that major accidents were not likely. We now know that the system that was supposed to bring us safe reactors was seriously flawed.

It seems to me, therefore, that at a minimum, if we were to proceed with additional nuclear projects beyond those to which a commitment had been made, we should do so only after the current regulatory process had been reviewed and changes made where appropriate. I proposed therefore the language in Section 101(b) of H.R. 6390 which provides for a halt of up to three years duration in issuance of nuclear reactor construction permits beyond those already applied for. Under this provision, the Commission would be authorized to resume issuance of construction permits upon certifying that certain steps had been taken to review and modify the existing regulatory scheme. If the Commission had not made the required certifications prior to the end of a three-year period, it would nevertheless have been permitted to resume issuance of construction permits unless the Congress extended the prohibition period. I included this three-year limit in order that may proposal not be tantamount to an open-ended moratorium.

I also proposed in Section 101(a) that for a period of three years the Commission itself, rather than the staff, issue Operating Licenses for completed reactors and that such licenses be issued only upon Commission certification that the recommendations of the major Three Mile Island inquiries, as deemed appropriate by the Commission, had been taken into account in the conditions attached to the Operating License.

While the Committee did not act on Section 101, I believe its provisions to have been important and I believe that the NRC should, in any event, initiate the reviews required by Section 101(b) and make the certifications required by Section 101(a). The Commission has, in fact, assumed responsibility for making decisions regarding Operating Licenses and I hope it will continue this commendable course until public confidence in nuclear regulation has increased substantially over its present level.

Development of a Safety Objective

I believe also that it is important that a safety objective be developed and incorporated into the Atomic Energy Act. While such an objective will necessarily be imprecise, it will be a benchmark by which those in industry, at the NRC, and among the public at large may make judgments as to whether specific plans do meet minimum safety requirements. Section 103 of H.R. 6390 required the NRC to develop alternative safety objectives which Congress could use as a basis for its own deliberations on the matter. This is another element of H.R. 6390 that the Committee did not consider and it is something that I will reintroduce next year.

Responsibilities of NRC and FEMA

Another issue addressed by H.R. 6390, but never fully considered by the Committee, is the need for a statutory clarification of the authority and responsibility of both NRC and the Federal Emergency Management Agency (FEMA) with regard to radiological emergency planning and preparedness in the vicinity of licensed nuclear power plants. The inclusion of this provision in section 102 of H.R. 6390 was responsive to the recommendations of the President's Commission on the Accident at Three Mile Island (Kemeny Commission). Testimony on this provision was generally favorable during Subcommittee hearings on the bill. When NRC Chairman John Ahearne testified on behalf of the Commission at the Subcommittee's March 18, 1980 hearing, he said:

> We (the NRC Commissioners) favor a statutory provision that would clearly specify the respective roles of FEMA and NRC in emergency response planning.

Similarly, when FEMA Administrator John Macy testified before the Subcommittee on May 12, 1980, he stated:

> I think new legislation on emergency preparedness to clarify the legal basis for ongoing and future relationships with NRC should be pursued.

The need for such legislation has increased in the time that has passed since H.R. 6390 was introduced last January. On one hand, questions have been raised regarding overlapping and conflicting authority and responsibility between FEMA (under the Disaster Relief Act of 1974) and NRC (under the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974) in the event of a serious accident at a nuclear power plant. On the other hand, concerns have been raised about the creation of "regulatory gaps" as a result of the delegation by NRC of radiological emergency planning responsibilities to FEMA before that agency is up to the job. I regret our inability to deal with this issue at this time, and I intend to introduce similar legislation next year.

Price-Anderson Reform

Another area that I am deeply concerned about is the Price-Anderson Act. The present Act sets a limit on liability for nuclear accidents of $560 million. This amount, established in 1957, was and continues to be an arbitrary figure. Legislative history indicates

that the $500 million Federal indemnity figure was chosen in an attempt to provide a specific amount for damages from a potential nuclear accident and yet not significantly disrupt the budget for that year.

Now, more than 20 years later, the $560 million limit remains in place. Studies indicate that the original $560 million amount, if adjusted for inflation only, should be $1.4 billion. Revised reports also conclude that potential damages from a nuclear accident may be much greater than we had previously assumed. Given the experience at TMI and the preliminary reports on claims paid from that incident, I believe that both the concept of limited liability and the dollar amounts provided should be re-examined.

Need for Power

Section 302 of H.R. 6390 as introduced recognized that state governments, and not the NRC, are the most appropriate bodies for determining whether or not there exists a need for power. This provision would have amended the Atomic Energy Act of 1954 to prohibit NRC from issuing a nuclear plant construction permit until such time as the host state has certified to the Commission that a need exists for the power from the proposed facility. In my view, such a provision would enhance the nuclear siting and licensing process. I intend to bring the matter before the Committee next year.

Public Participation Funding

As introduced, section 301 of H.R. 6390 would have amended the Atomic Energy Act of 1954 to create a public participation funding program to assist qualified intervenors in the Commission's rulemaking proceedings. I included this provision in the bill because I believe the establishment of such a program will help assure that the Commission compiles detailed and diverse views before making regulatory decisions on major issues affecting large numbers of people. The concept still has merit and should be considered further.

Standardized Nuclear Power Plants

One important matter not addressed in H.R. 6390 was the question of standardized nuclear power plants. Many suggestions have been made along the lines that reactors would be safer if there were less diversity in design. Less diversity would allow limited analytical resources to be applied in more thorough analysis of a small number of designs than is currently feasible in the present situation where there is so much variation from one plant to the next. Furthermore, if there were less diversity in design, it would be possible for industry to develop more sophisticated training procedures for reactor operators. Finally, utilities could have more confidence in the safety and reliability of such plants and in their ability to pass through the licensing process with relatively low likelihood of encountering unexpected obstacles. In light of the potential benefits of standardization, Congressman Symms and Senators Hart and Simpson joined me in requesting the Office of Technology Assessment to undertake a study of reactor standardization. This study is now underway and will be available to us as we consider next year whether we should enact legislation which would mandate standardization or establish incentives that would encourage the industry to move in this direction.

Mo Udall.

ADDITIONAL VIEWS

Role of the States

This bill does not contain adequate provisions guaranteeing the States will fully participate with the Federal Government in selecting and licensing nuclear waste disposal sites.

Congressman Kostmayer proposed in the Interior Committee, and will do so again on the floor, language requiring both Houses of Congress to override a State's objections to a waste site within its borders.

An identical amendment, which was offered to the Science and Technology Committee's version of waste legislation, failed in the Interior Committee by a vote of 21 to 20. The amendment would allow an affected State to petition the Congress to block the decision of DOE and the President to proceed with licensing of a waste site. The Federal Government would then have the burden of demonstrating why the State's objections should be overridden, which would require a concurrent resolution of disapproval by Congress. The right of Congress to prevail in the national interest would be preserved.

The threat of a "State Veto" would help to insure that the DOE would aggressively enlist the support and cooperation of the States. This in turn would help to insure the technical soundness of the siting proposal and the political support necessary for its implementation.

In fact, the two-house override was endorsed by the State Planning Council on Radioactive Waste Management, which was established by the President earlier this year to "advise the Executive Branch and work with Congress on key radioactive waste management and disposal issues, especially related institutional decisions." The Council adopted a resolution of policy on September 8, 1980, stating:

> . . . If a State's objections to a decision to site a repository cannot be resolved in a mutually satisfactory manner, an explicit Presidential determination and *affirmative action by both Houses of Congress shall be required to override these objections.* If an affected Tribe's objections to a decision to site a repository cannot be resolved in a mutually satisfactory manner, an Act of Congress would be required to override these objections. (emphasis added)

This is not a case of the Congress, through a legislative veto, overturning an agency's rules and regulations. We are talking here about one (1) licensing project sometime near the end of the decade involving the permanent disposal of intensely radioactive waste for thousands of years.

Instead, the Committee adopted a weakened amendment upholding a State's objections to selection of a waste site only if approved by at least one House. If a State could not convince one House of Congress that its objections to a waste site were legitimate, the project would proceed over the State's objections.

We also expect that when the bill is considered on the floor, amendments strengthening the role of the States even further than the Kostmayer amendment will be offered. For example, many States which have been considered as possible host States for the Nation's first nuclear waste site oppose any Federal role whatsoever, favoring instead an absolute State veto over site selection. In

fact, this has been the position of the National Governors Association (NGA) for the past two years.

Together with the detailed procedures for State participation that the bill already contains, the amendment offered by Mr. Kostmayer is the only way to insure that the States' role will be meaningful and constructive, and not perfunctory. By providing the States with true concurrence in key Federal decisions on nuclear waste, and at the same time preserving the right of Congress to override the State, the proper balance between Federal and State concerns will be maintained.

PETER H. KOSTMAYER.
EDWARD J. MARKEY.
MICKEY EDWARDS.
RAY KOGOVSEK.
BOB WHITTAKER.
JIM SANTINI.
PAT WILLIAMS.
JIM WEAVER.
GEORGE MILLER.
BOB KASTENMEIER.
PHILLIP BURTON.
BRUCE F. VENTO.
JERRY HUCKABY.
RON MARLENEE.
DAN MARRIOTT.
NICK RAHALL.

SEPARATE VIEWS

The legislation, as approved by the Interior Energy and Environment Subcommittee, contained language which I supported providing states the authority to veto a site, subject to a two-House override under expedited procedures. That language was struck by the full Committee, which adopted in its place a provision which would allow a state veto to be effective only if sustained by one House of Congress.

The fundamental problem in the history of the regulation of civilian use of nuclear material by the Atomic Energy Commission and now by the Nuclear Regulatory Commission and the Department of Energy is the secrecy in which decisions affecting public welfare have been made. Forced disclosure to the public of mismanagement on the part of the industry and regulators, and increased participation of the public in regulatory hearings and in the courts, has contributed significantly to improved decisionmaking, and the development and enforcement of stricter safety standards in the nuclear industry. Similarly, state participation in decisions to store nuclear waste within their jurisdiction, and a mechanism to assure that any state opposition is aired in the public, and reviewed appropriately by the Congress will result in the best possible decisions on where to store this material.

Permanent storage of spent nuclear fuel requires isolating the material from the environment for hundreds of years. Proposed siting of such a geologic repository in my state of Ohio, for example, would certainly engender a heated debate about the environmental, social and political implications of accepting such a responsibility. Were Ohio selected for such a site and the state vetoed the site, I would certainly want the Congress as a whole to seriously consider that veto, so that a balance could be struck between the national interest and the right and responsibility of the state to protect the public health and safety of its citizens.

I hope the House will restore the Subcommittee's provision when this bill is debated on the floor.

JOHN SEIBERLING.

SEPARATE VIEWS

The Lyons, Kansas, Debacle: A Case Study in Why the State's Right To Object Must Be Strong

The Department of Energy and its predecessors have an unenviable track record in their dealings with the states over the question of where to locate nuclear waste repositories. A case in point is what happened to Kansas in the early 1970s. The story of how the Atomic Energy Commission tried to force the selection of a waste dump in Lyons, Kansas is told in the new book by Ronnie Lipschutz, "Radioactive Waste: Politics, Technology and Risk" (Cambridge, Mass: Ballinger, 1980). Excerpts from the Lipschutz book follow:

"By 1971, preparatory work was considered complete, and the AEC announced that permanent disposal of both transuranic and high level wastes would soon commence in the Lyons mine. The agency claimed that research had shown the method to be fully developed and the site to be suitable. The wastes would be isolated from the biosphere for the requisite period of time, according to the commission's claims.

As of 1971, the AEC had spent fifteen years and some $100 million studying bedded salt disposal. The agency maintains that the radioactive waste problem was solved and that implementation of the solution could begin promptly. So confident was the AEC that Milton Shaw, director of the AEC's Division of Reactor Development in testifying before the Joint Committee on Atomic Energy on the fiscal year 1972 budget for the Lyons project, . . . stated that the site was 'equal or superior to the others (in the country).' But AEC confidence was, as things turned out, badly misplaced. The site was grossly unsuitable. The Kansas Geological Survey concluded that the Lyons site was not at all adequate for the purpose. Independent geologists concurred, for at the other end of the town of Lyons was another salt mine, and underneath the town, the galleries of the two mines came as close as 500 yards to the selected site. The operators of the second mine utilized a salt extraction process called hydraulic fracturing, in which fresh water is injected into one borehole and emerges from another as brine, which is then pumped to the surface. One of these operations unexpectedly produced no brine; over 180,000 gallons of water were pumped into a borehole and simply disappeared. It became clear that the geology of the site was inadequately known. Moreover . . . the location of many of these (oil and gas) boreholes was not known because the state of Kansas did not require the registration of dry wells. Dr. William Hambleton of the Kansas Geological Survey described the Lyons site as 'a bit like a piece of Swiss cheese' . . . The Kansas Geological Survey recommended abandonment of the site, and the citizens of Kansas showed strong resistance. . . . Under pressure from the Kansas congressional delegation, the AEC announced in 1973 that the Lyons site was being abandoned."

Edward J. Markey.

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